

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN**  
**DIVISION**

WHOLE FOODS MARKET, INC. and AMAZON.COM, INC.,

Plaintiffs,

DYSON, INC., EXCEL DRYER, INC., NSF INTERNATIONAL, SGS NORTH AMERICA, INC., UL  
SOLUTIONS LLC, SMART EPD LLC, and ANNA LASSO, individually,

Defendants.

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

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**I. INTRODUCTION**

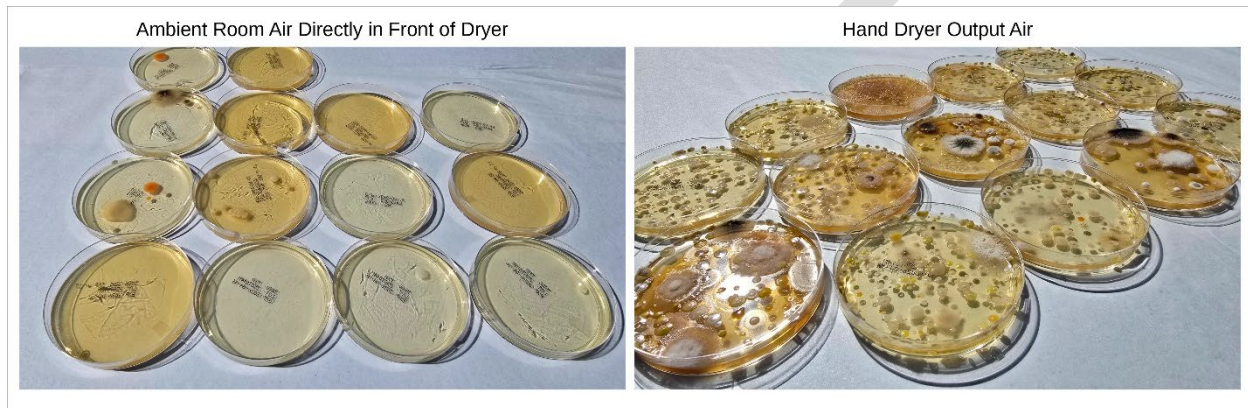
**A. The Test**

1. The claims made in this case can be verified effortlessly by anyone in a few minutes. They can be experienced directly, without scientific equipment, without expert testimony, without specialized knowledge. Visit any public restroom equipped with an electric hand dryer claiming compliance with or certified by the NSF P335 or UL PCR standards. Wash your hands. Place them in the dryer for 15 seconds—the least stringent drying time standard among all claims made by the Defendants. We begin by giving them the benefit of the doubt. Observe three things: (1) Watch where the water goes as it leaves your hands. (2) Remove your hands at 15 seconds. They will

be visibly and obviously wet. (3) Look at the walls and floor near the dryer's air outlet. Note the growing mold, dirt and water staining originating from that point.

## B. The Hypothetical

2. All aspects of hand dryer performance can be understood if you remove it from the room. Does a dryer improve or degrade the room by being there?



## C. The Stakes

3. This case arises in a food service setting where the consequences of contamination extend from restroom to plate in a matter of seconds. Plaintiff Whole Foods Market built its brand on trust—organic produce, sustainable sourcing, environmental responsibility, and a promise that the company makes careful decisions about what enters its stores. Health-conscious customers shop there because they believe that promise. It extends to every surface customers touch, every system that serves them, and every representation the company makes about the safety and cleanliness of its facilities.
4. Plaintiff operates over 500 retail locations serving millions of customers annually. Employees wash their hands before preparing food at deli counters, hot bars, salad stations, and bakery cases. Customers wash their hands before approaching self-service buffets where they handle shared utensils. The journey from the restroom to the food is measured in seconds. When the equipment installed to dry hands

instead leaves them wet with amplified bacterial loads—and sprays contaminated water throughout the restroom environment—the contamination infrastructure sits adjacent to food service.

5. Dyson Airblade and Excel XLERATOR hand dryers are installed in restrooms across Plaintiffs' retail locations nationwide. Every use of these devices exposes employees and customers to conditions Defendants knew, or should have known, were harmful. In a food service establishment where hand hygiene directly precedes food contact, contamination amplification is not an inconvenience—it is a betrayal of the fundamental promise Plaintiffs make to their customers.

#### **D. The Products Defendants Sold**

6. Defendant Dyson marketed its Airblade hand dryers to Plaintiffs with specific claims: “Hygienic.” “Independently proven safe.” “Dried in 10-12 seconds.” “HEPA-purified air, not dirty air.” “Certified as hygienic by HACCP International” and “certified for use in food preparation environments.” These claims were false when made, remain false today, and were known or should have been known to be false by Dyson at the time of sale.
7. Defendant Excel marketed its XLERATOR hand dryers to Plaintiffs with specific claims: “Dries hands completely in 8 seconds.” “A hygienic hand drying solution.” “80% less energy than conventional hand dryers.” “95% cost savings compared to paper towels.” “88% reduction of carbon footprint vs. paper towels.” These claims were false when made, remain false today, and were known or should have been known to be false by Excel at the time of sale.
8. Dyson claims 10-12 second drying. Excel claims 8-second drying. Independent testing of 451 drying cycles established that zero percent achieve the NSF P335 specification of 0.1 grams residual moisture at claimed times. At claimed drying times, residual moisture averages 2.77 grams—2,770% above specification. The

actual time required to approach certification thresholds is 70 to 90 seconds.

Defendants' drying time claims are false by 500 to 1,000 percent.

9. Both Defendants claim "hygienic" hand drying—and specifically market to food service facilities with claims of superior hygiene. Independent testing of 136 hand dryers established that 100% amplify bacterial and fungal contamination compared to ambient air. The median amplification factor is 49.6 to 110.5 times ambient levels. The probability of 136 consecutive tests showing amplification under the null hypothesis is less than  $10^{-41}$ . Defendants' hygiene claims are not merely false—they are the opposite of true. Products marketed as "hygienic" and "certified for use in food preparation environments" amplify contamination in facilities where contamination flows directly to food.
10. Both Defendants claim energy and environmental savings. Because their energy calculations are predicated on false drying times, they are mathematically invalid. Energy consumption equals power multiplied by time. At actual drying times of 70-90 seconds, energy consumption is 7 to 10 times higher than claimed. The environmental advantage over paper towels disappears entirely at actual operating times. Products marketed as "green" are statistically equivalent to paper towels or worse.
11. Dyson claims HEPA filtration provides protection. Excel offers optional HEPA filtration with similar claims. Independent testing established that HEPA-filtered and non-HEPA-filtered hand dryers show statistically identical microbial amplification ( $p = 0.803$ ). The filter addresses intake air while ignoring the primary contamination pathway: bacteria and fungi amplified from interior surfaces and dispersed onto users. In a food service setting, the false promise of HEPA protection is particularly dangerous—it induces reliance on a safeguard that does not exist.

12. Defendants' own data confirms these findings. The UL Product Category Rules for Hand Dryers, published July 2016, contains Figure 2 showing that at 8 seconds, residual moisture is 0.456 grams—82% above UL's own threshold and 356% above NSF P335. Excel held four of ten manufacturer seats on the committee that published this data. Excel knew 8-second drying was physically impossible. Dyson, certified under NSF P335, knew its products could not achieve the 0.1 gram threshold at claimed times.

## **E. The Reliance**

13. Plaintiffs are sophisticated institutional purchasers. Plaintiff Whole Foods operates one of the largest natural and organic food retail chains in the world. Plaintiff Amazon, having acquired Whole Foods in 2017, applies rigorous due diligence to every aspect of its operations. When companies of this caliber are deceived by manufacturer representations and third-party certifications, the deception is complete.
14. Plaintiffs purchased hand dryers manufactured by Defendants through authorized distributors in the facilities supply chain. Defendants marketed their products directly to food service facilities including Plaintiffs, provided marketing materials and technical specifications to Plaintiffs' decision-makers, and specifically targeted food service establishments as customers and case studies.
15. Plaintiffs relied on Defendants' representations that these products were hygienic, fast-drying, and environmentally superior to paper towels. Plaintiffs relied on certifications issued by Defendants NSF International, UL Solutions, SGS North America, and SmartEPD—certifications that bore the marks of nationally recognized testing laboratories and appeared to represent independent verification of manufacturer claims.
16. Plaintiffs' reliance was reasonable. When manufacturers make specific food service hygiene claims supported by certifications from nationally recognized

testing laboratories, an institutional purchaser is entitled to trust those claims.

When those claims are false, and those certifications are the product of captured standards and self-dealing, the manufacturers and certifiers bear responsibility for the resulting harm.

17. The harm to Plaintiffs is not merely economic. Plaintiffs' brand is built on health, quality, and environmental responsibility. Every day that Defendants' products operate in Plaintiffs' facilities—amplifying contamination adjacent to food service, dispersing contaminated water onto restroom surfaces, growing mold on walls—Plaintiffs' promise to their customers is compromised by equipment Plaintiffs installed in reasonable reliance on Defendants' false representations.

## **F. The Enablers**

18. The manufacturer Defendants—Dyson and Excel—made false claims about their products. But those claims gained credibility through a network of certification bodies that stamped them with seals of approval. The certifiers did not merely fail to catch the manufacturers' false claims. The certifiers created the conditions that made those claims possible.
19. Defendant NSF International created NSF Protocol P335, titled “Hygienic Commercial Hand Dryers,” establishing a 0.1 gram residual moisture threshold. NSF certifies Dyson products under this standard—products that achieve zero percent compliance in independent testing. NSF has maintained this certification for over eleven years despite products achieving zero percent compliance with the certified specification. NSF wrote a standard titled “Hygienic” and certified products that amplify contamination by 50-110 times.
20. Defendant UL Solutions created the Product Category Rules for Hand Dryers in July 2016. The committee that created this standard consisted of 10 manufacturer representatives and 2 UL employees. Zero public health officials. Zero consumer representatives. Zero independent researchers. Excel held four of ten manufacturer

seats. William Gagnon of Excel chaired the committee. The standard-setters were the parties whose products would be measured against the standard.

21. The UL PCR established a 0.25 gram residual moisture threshold—2.5 times weaker than NSF P335's 0.1 gram threshold. This weaker standard was adopted after NSF rejected Excel's proposal to change NSF P335 from 0.1 grams to 0.2 grams. When Excel could not weaken one standard, it helped create a weaker one. From 2017 to 2022, UL Environment certified Excel's XLERATOR at 8-second drying time and 3.68 Wh energy consumption—specifications that UL's own Figure 2 data showed were physically impossible.
22. Defendant SGS North America tested Excel's products in 2012 using "a revised version of NSF Protocol P335"—a standard NSF had rejected. SGS tested at 12 and 15 seconds, not the 8 seconds Excel markets. SGS reported 0.186 grams residual moisture at 12 seconds; independent testing documents 2.5 to 3.0 grams at the same interval—a discrepancy of 1,350 to 1,600 percent. SGS testing became the foundation for every downstream certification and environmental claim.
23. Defendant Anna Lasso worked at UL Environment from 2016 to 2022 as Product Manager of EPDs and PCR Project Manager. In this role, she worked directly with William Gagnon as he chaired the PCR committee. Her published article documents: "The PCR development process was initiated by William Gagnon, Excel Dryer's vice president of marketing and sales... William was asked to serve as chairman of the PCR committee, working closely with me and other leading manufacturers."
24. In April 2022—the same month a competitor received a UL EPD at 30-35 seconds drying time—Anna Lasso formed EPD USA LLC, later renamed Smart EPD LLC. In July 2022, Excel's UL certification expired and was not renewed. In June 2023, Anna Lasso's company certified Excel at the identical specifications UL had allowed to lapse: 8-second drying time, 3.68 Wh energy consumption. UL would not certify 8 seconds. Anna Lasso did.

25. Defendant SmartEPD, through Anna Lasso, issued Certificate No. SmartEPD-2023-002-0006-01 listing Anna Lasso in three roles: Program Operator, Independent Critical Reviewer, and Independent External Verifier. ISO 14025 requires these functions to be independent. One person occupies all three roles on certificates she issues for products manufactured by companies she worked with while developing the underlying standard. She is checking her own work.
26. The certification network functioned as designed: manufacturers controlled the standards, certifiers validated the claims, and purchasers like Plaintiffs relied on the apparent independence of the process. The independence was illusory. The certifications were worthless. The reliance was betrayed.

## **G. The Continuing Harm**

27. The harm to Plaintiffs is ongoing. SmartEPD Certificate No. SmartEPD-2023-002-0006-01 remains active through June 23, 2028. NSF P335 certifications for Dyson remain active. Defendants continue to market false drying time and hygiene claims. Every day that Defendants' products remain in service at Plaintiffs' locations, employees and customers are exposed to conditions Defendants knew or should have known were harmful.
28. For a food service establishment, the exposure is particularly acute. Employees who dry their hands at these dryers then immediately handle food that customers will consume. Customers who dry their hands then approach self-service stations where they handle shared utensils. The contamination amplification documented in independent research—50 to 110 times ambient levels—flows directly into the food supply chain.
29. Plaintiffs continue to suffer property damage. The water dispersal that occurs with every use—7.3 grams per drying cycle sprayed onto walls, floors, and fixtures—has caused visible mold colonization in 100% of dispersal-type hand dryer installations. Walls require repainting. Tiles require replacement. Building materials are

compromised by persistent moisture and fungal growth. This damage is to property distinct from the hand dryers themselves.

30. The defect is the design itself. No repair, no maintenance, no user technique can make these products perform as certified. The physics does not negotiate. The only remedy is removal and replacement with equipment that actually dries hands hygienically—a solution as simple as white paper towels, which achieve complete drying in 10-15 seconds, introduce no contamination, cause no mold colonization, and cost the same as hand dryers at actual operating times.

## **E. Claims With Counters**

31. The claims in this section are summaries synthesized directly from Defendants' own documents. Citations from each defendant for each claim are detailed in Factual Allegations, Section IV.

### **1. Purpose**

32. All Defendants agree: the purpose of a hand dryer is to dry hands. Anna Lasso, UL Solutions and NSF International state in their standards documents. SGS tested for it in its commissioned dryer tests. Drying hands is the product's sole function, the basis for every certification issued, and the standard against which every claim in this complaint is measured.
33. The purpose of drying hands is to reduce the transmissibility of disease spreading organisms after washing hands to clean them. Hand washing and drying are supported by 150 years of unequivocal science proving that both together reduce disease individually and in populations.

### **2. Drying Time**

34. Defendants created the industry standards for hand dryer drying performance, or tested them, and then certified dryers that claim to meet those standards of 8-15

seconds to residual moisture thresholds of 0.1g or 0.25g. Compliance is claimed across all standards in their certification, testing or standards documents.

35. Based on the science from which this complaint arises the number of production hand dryers ever made that have dried hands in less than 15 seconds to 0.25g of residual moisture is zero. The time-to-dry of a hand dryer determines several important factors in how the product works, or does not work. Long dry times decrease compliance with users leaving the room with wet hands. Long dry times increase unit energy use per dry. Long dry times increase the carbon footprint of the product. Long dry times expose the user to increased bacterial and fungal loads. Every commercial pressure for hand drying in a dryer is to claim fast times, not slow ones.

### **3. Hygiene**

36. Products marketed as hygienic are certified by the Defendants under standards they wrote that either ignore hygiene entirely, explicitly exclude it from consideration, or acknowledge the risks and certify anyway. Anna Lasso claims hygiene matters in a single line in both of her certifying documents and then specifically excludes it from analysis. UL mentions hygiene once in its PCR and provides no testing requirements. NSF documents the public health risks of inadequate drying and bacterial dispersal but provides no standards or testing methods. SGS fails to mention hygiene at all.
37. Hand dryers are the direct result of a lineage of continuous science extending for 150 years that, without exception, proves that washed and dried hands decrease death and disease. The scientific consensus on this subject far exceeds the agreed upon uniformity of the science on second hand cigarette smoke, already well established in the courts as causal for disease even without proof of downstream harm. A hand dryer's sole purpose for existence is, uncontroversially, to increase sanitation for the user of a restroom. Drying hands after having washed them is the method. The Defendants, rather than building their standards around testing for

functional sanitary performance barely mention it. At any moment during business hours 125,000 Americans are simultaneously being exposed to these amplified bacterial, fungal, and potentially viral, loads.

#### **4. Water Dispersal**

38. None of the defendants address where the water on wet hands goes after the dryer air jets hit it. Anna Lasso, UL, and SGS never mention it. NSF created containment specifications for capture-type dryers but ignores dispersal-type dryers entirely, noting only that “liquid containment should be monitored during testing” for products that by design do nothing to contain liquid. The final stage of the product cycle—water dispersal into the shared restroom environment—has been completely ignored by every entity responsible for certifying these products.
39. In a product whose single purpose, its literal reason for existing, is to remove water from wet hands the several certifying bodies writing the design, build, and testing standards for the products – and the manufacturers who make and sell them - completely fail to mention the destination and management of the water on hands after the dryer air strikes it. That is surreal.

#### **5. Plume of Filth**

40. No defendant addresses the persistent mold that forms on walls and dryer surfaces in 100% of dryer installations in any of their certifying, standards, or testing documents.
41. Visible mold colonization has been documented in 100% of ~200 tested installations. No defendant mentions the problem, much less providing any standard for preventing, measuring, or remediating it.

#### **6. Energy and Environmental Claims**

42. Defendants set the standards and offer certifications for energy use and carbon use for hand dryers, the central feature of all marketing claims made by every dryer

manufacturer and a, possibly the, basis for over a billion dollars in purchases made every year. Anna Lasso claims in the TrueNorth LCA that Excel dryers have “between 80% to 97% fewer impacts than the paper towel baseline” and “83% less” global warming potential. UL provides the methodology “to support comparable, informed, and objective sustainable purchasing” and in a prior, expired UL Excel Dryer EPD claimed 3.68 Wh per use and 3.05g of CO2 per use. NSF makes no direct environmental claims. SGS makes no energy claims, but its test results form the basis for all subsequent life cycle assessments.

43. The energy savings and environmental claims made by hand dryer manufacturers are a primary reason they are purchased and the most heavily marketed aspect of their performance. Energy savings are based on false dry times certified by the Defendants.

## **F. A Brief Case Summary**

### **1. The Document That Proves It**

44. Certificate SmartEPD-2023-002-0006-01, issued June 23, 2023, certifies the XLERATOR Hand Dryer. Page 2 lists three verification parties: EPD Program Operator (Anna Lasso, Smart EPD), Independent LCA Reviewer (Anna Lasso, Smart EPD), and Independent External Verifier (Anna Lasso, Smart EPD). ISO 14025 requires these to be separate parties providing independent oversight. One person occupies all three roles.
45. Page 3 states: “The XLERATOR dries hands completely in 8 seconds.” Page 13 states the underlying test data comes from SGS International, “pursuant to the UL Environment Global Product Category Rules (PCR) for Hand Dryers.” The energy calculations, environmental claims, and LEED credits all flow from this 8-second foundation for which there is no publicly available testing data as of the date of this complaint. Empirical testing comprising 451 trials proves it false.

## **2. The User's Dilemma**

46. Every user of a hand dryer is presented with an impossible choice with each use: withdraw prematurely to meet drying time standards or stay to completion to dry their hands.
47. Early withdrawal with wet hands spreads the amplified dose of bacteria and fungus and viruses contained in the output air on all surfaces touched afterward. Drying to completion exposes the user to 50-110x more microorganisms and makes the hand dryers brown, not green.

## **3. Defective Standard, Not Defective Product**

48. Certifier immunity from product liability is well-established. When a hand dryer fails due to manufacturing defect — a wiring fault, a faulty heating element, a defective motor — the manufacturer is liable. The certifier tested a sample; it cannot guarantee every unit off the production line. Courts have properly protected certifiers from such claims. See *Toman v. Underwriters Laboratories, Inc.*, 532 F. Supp. 1017, 1019 (D. Mass. 1982) (“UL can be held liable only for its own negligence, not vicariously for that of [the manufacturer]”). Plaintiffs do not challenge this doctrine.
49. Certifiers must necessarily be liable for their own products: the standards and the certifications they create and assign. Defendants did not manufacture hand dryers. Defendants manufactured standards. Defendants manufactured test methodologies. Defendants publicly stamp certified products with their brand. The UL sticker is likely the most ubiquitous brand label in the world. There are likely more UL stickers in individual residences or businesses in the US than any other single brand mark. That mark is a binding obligation to the user as well as the manufacturer — a public promise of safety and trust.
50. Defendants manufactured certifications bearing their marks. NSF and UL have special status under 29 CFR § 1910.7. OSHA recognizes certain private-sector

organizations as Nationally Recognized Testing Laboratories (NRTLs) granting them quasi-regulatory authority which must be accompanied by equivalent responsibility and redressability when they have failed. When those products are defective — when standards fail to protect public safety, when test methods fail to detect non-compliance, when certifications misrepresent performance — the certifier bears liability for its own conduct, not derivative of manufacturer fault. See *Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680, 685 (1969) (endorsement seal creates duty of care to consumers who rely on it); *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270 (Pa. 2005) (adopting Restatement § 552 for information suppliers).

51. Certifiers are liable for defective standards and defective testing. UL created the Product Category Rules. UL convened the committee. UL specified the test methodology. NSF wrote Protocol P335. NSF established the thresholds. SGS conducted the testing. Smart EPD issued the certifications. These are Defendants' own creations. Empirical testing of products against Defendants' certified specifications—451 trials—shows zero compliance. The certified specifications are false.
52. The distinction matters: Defective product with valid standard means manufacturer liability. Defective standard means certifier liability. Defective testing means certifier liability. This case involves both.

#### **4. The Mark Is A Contract**

53. The UL and NSF marks are not merely representations—they are implicit contracts with every purchaser and user. Every element of contract formation is present.
54. Offer. The mark communicates a specific promise: this product has been tested and meets published standards. The mark is designed for visibility at point of purchase and point of use. It is not an internal quality control notation—it is a consumer-facing representation intended to induce reliance and purchase.

55. Acceptance. Consumer purchase of a product bearing the mark constitutes acceptance. The mark influenced the decision. The transaction completed.
56. Consideration. Certification fees are embedded in product pricing. Consumers pay those fees with every purchase. Certifiers receive payment through manufacturers acting as conduits. The consideration flows from consumer to certifier—the manufacturer is merely the collection mechanism.
57. Mutual Assent. UL has spent 130 years building one of the most recognized consumer safety brands in the world. The UL mark appears on 22 billion products annually. NSF markets itself as “protecting public health” and promises “assurance that the product has been rigorously tested.” This is not incidental brand recognition—it is deliberate, sustained, consumer-directed marketing designed to generate the very reliance that forms the basis of mutual assent.
58. Defendants cannot build consumer-facing brands for a century, profit from consumer reliance with every certification issued, and then disclaim the contractual relationship their business model created. The mark is the contract. The certification is the breach.
59. The traditional defense is predictable: UL and NSF contracted with manufacturers, not consumers. Consumers are incidental beneficiaries. There was no meeting of minds. Courts have been reluctant to open this door—but that reluctance reflects policy preference, not contract law. The elements have always been present. The UL mark has never not been a contract. Offer, acceptance, consideration, mutual assent—all satisfied with every purchase of every marked product for over a century. Courts have simply declined to recognize what was always there, protecting an industry that built its entire revenue model on consumer reliance while disclaiming responsibility to the consumers it cultivated. Defendants did not build consumer-facing marks by accident. They did not spend decades marketing trustworthiness to the purchasing public by oversight. They did not design marks for point-of-purchase visibility because they were indifferent to consumer perception.

Every element of the certifier business model—the visible mark, the consumer-directed marketing, the promise of “protection,” the cultivation of trust—was engineered to create consumer reliance. Defendants built the relationship. Defendants profited from the relationship. Defendants are bound by the relationship. Intent is inferred from conduct, and Defendants’ conduct for over a century admits of no other interpretation.

## **5. The Certification Network**

60. The certification system is an incestuous closed loop. Manufacturers who could not pass existing standards created new ones. The people who created the standards conducted the testing. The people who conducted the testing issued the certifications. At no point does an independent party verify performance.
61. Anna Lasso is the anchor. She helped write the UL standard while employed at UL. She founded Smart EPD after leaving. She now issues certifications under the standard she helped create — serving simultaneously as Program Operator, LCA Reviewer, and External Verifier on the same certificate. One person occupies three roles that ISO 14025 requires to be independent. She is checking her own work and the rest of the Defendants have allowed or encouraged it.
62. Every node in this network is documented in the Factual Allegations. The pattern is consistent since Denis Gagnon purchased Excel Dryer and claimed to have invented the first 12-seconds-to-dry hand dryer. The faces become familiar over decades and false certifications become an interesting web as the narrative plays through.

## **6. The Certification Transfer**

63. On July 25, 2017, UL Environment issued Environmental Product Declaration No. 4787137936.102.1 for Excel Dryer’s XLERATOR hand dryer. The certificate had a five-year validity period expiring in July 2022.

64. On April 26, 2022, Anna Lasso formed “EPD USA LLC,” later named Smart EPD LLC. At the time of this filing, Anna Lasso was either employed by UL Environment as Product Manager of EPDs and PCR Project Manager or had recently terminated employment there.
65. In July 2022, UL Environment’s EPD No. 4787137936.102.1 for Excel Dryer’s XLERATOR expired. UL did not issue a renewal. UL did not renew Excel’s certification. UL continues to certify hand dryers for other manufacturers, including Hokwang, with EPDs valid through April 2027.
66. UL Solutions continues to issue EPD certifications for hand dryers. Hokwang Industries, a PCR committee participant, maintains active UL EPDs through April 2027 for its HK-2200 series at claimed drying times of 30-35 seconds. Excel Dryer’s decision to obtain certification through SmartEPD rather than renewing with UL—while UL was actively certifying a competitor at longer drying times—raises questions warranting discovery regarding why Excel could not or would not renew its UL certification.
67. On June 23, 2023, Smart EPD issued Environmental Product Declaration No. SmartEPD-2023-002-0006-01 for Excel Dryer’s XLERATOR hand dryer. Thomas P. Gloria of Industrial Ecology Consultants, the same individual who verified the UL EPD, verified the lifecycle assessment using the same numbers contained in the expired UL EPD. Anna Lasso is listed on the SmartEPD certificate as Program Operator, Independent Critical Reviewer, and Independent External Verifier.
68. The SmartEPD certificate states on page 13: “Tests were performed by SGS International on standard XLERATOR Hand Dryer with 0.8 inch nozzle to 0.25g or less of residual moisture, pursuant to the UL Environment Global Product Category Rules (PCR) for Hand Dryers.” SmartEPD certifies products under the same standard, using the same tests, that Anna Lasso helped develop while employed at UL.

69. Smart EPD LLC's registered office address, as filed with Virginia, is 25320 Ripleys Field Dr, Chantilly, VA 20152 — a single-family residence. The company's mailing address, as listed on its certificates and website, is 585 Grove St., Ste. 145, PMB 966, Herndon, VA 20170 — a UPS Store commercial mail receiving facility.

## **7. The Unexpected False Energy and Environmental Claims Validation by UL Solutions**

70. After substantially all empirical testing was completed, a current UL Environment EPD for a Hokwang hand dryer was discovered—Declaration No. 4787616201.106.1, issued April 1, 2022, valid through April 2027. This EPD certifies a conventional warm-air dryer at 30-35 seconds drying time. Even at this likely false claimed drying time—a conventional 2.0 kW warm-air dryer almost certainly requires 90+ seconds to reach 0.074g based on testing of comparable units—UL's energy and CO<sub>2</sub> calculations validate the empirical methodology. More critically, UL's own certified data illustrates precisely how drying time determines energy consumption—using work done and certified by one of the Defendants:

| Source            | Time      | Energy (Wh) | CO <sub>2</sub> (g) |
|-------------------|-----------|-------------|---------------------|
| NSF/SGS/SmartEPD  | 8-12 sec  | 3-4         | ~2                  |
| UL Hokwang        | 30-35 sec | 18          | 14                  |
| Empirical testing | 70-90 sec | 25-28       | 12-18               |

71. UL would not certify Excel at 8 seconds. Three months after UL issued the Hokwang EPD, Excel's UL certification expired and was not renewed. Within a year, Anna Lasso incorporated SmartEPD and certified Excel at the times UL would not.

## **8. The Liability Position**

72. Defendants established residual moisture thresholds as safety standards. These thresholds exist because Defendants determined that exceeding them creates risk.

73. If exceeding thresholds causes harm and Defendants certified products that exceed them by 1,000 to 2,500 percent then every use exposes users to conditions Defendants defined in their own self-created standards as unsafe.
74. If exceeding thresholds does not cause harm, Defendants' standards are arbitrary and meaningless. Defendants collected fees for compliance with standards that then protect nothing, driving reliance by millions of businesses and users on meaningless information for which they were paid and for which they make repeated claims has value.
75. Both positions establish liability and there are no other options.

## **9. A Solution**

76. White paper towels test to be consistently as clean as the room air they are in. This is a novel finding, entirely unexpected with no prior intent during paper towel microorganism testing. The documented science appears to be the only science ever done that tested for it. White paper towels are statistically equivalent to ambient room air in microbial content with 55.6% of them being completely sterile. They dry hands in 20-30 seconds to 0.1g residual water. They contain the water safely during drying rather than blowing it all over the room. They produce no liquid aerosol, no plume, no mold. They are energy and environmentally equivalent to dryers when corrected for actual time-to-dry and they dry hands in 1/3 the time it requires for a dryer. The manufacturing infrastructure is already in place. A white paper towel dispenser fits perfectly over the empty space left by a hand dryer after it has been removed and disposed of.
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## **II. PARTIES**

### **A. Plaintiffs**

77. Plaintiff Whole Foods Market, Inc. (“Whole Foods”) is a Texas corporation with its principal place of business at 550 Bowie Street, Austin, Texas 78703. Whole Foods operates more than 500 natural and organic food retail stores across the United States, Canada, and the United Kingdom. Whole Foods is a wholly-owned subsidiary of Amazon.com, Inc., having been acquired in August 2017. Whole Foods directly purchased and installed hand dryers manufactured by both Defendants in restrooms throughout its retail locations, relying on Defendants’ representations regarding hygiene, drying performance, and environmental impact.
78. Plaintiff Amazon.com, Inc. (“Amazon”) is a Delaware corporation with its principal place of business in Seattle, Washington. Amazon is the parent company of Whole Foods Market, Inc. Amazon has a direct financial interest in the value of its subsidiary and the integrity of the Whole Foods brand. The deception documented in this Complaint has caused direct harm to Amazon’s investment and to Amazon’s reputation as a company that exercises rigorous due diligence over its operations. That even Amazon-level procurement sophistication was insufficient to detect Defendants’ misrepresentations demonstrates the completeness of the deception.

### **B. Defendant Manufacturers**

79. Defendant Dyson, Inc. (“Dyson”) is, on information and belief, a Delaware corporation with its principal place of business in Chicago, Illinois. Dyson manufactures and sells the Dyson Airblade line of commercial hand dryers, including the Airblade V, Airblade dB, Airblade 9kJ, and Airblade Wash+Dry models. Dyson markets its hand dryers for use in commercial restrooms, including food service establishments, healthcare facilities, and retail environments. Dyson made

express representations to Plaintiffs and the public regarding the hygiene, drying time, and environmental impact of its products.

80. Defendant Excel Dryer, Inc. (“Excel”) is a Massachusetts corporation with its principal place of business in East Longmeadow, Massachusetts. Excel manufactures and sells the XLERATOR and XLERATOReco lines of commercial hand dryers. Excel markets its hand dryers for use in commercial restrooms, including food service establishments, healthcare facilities, and retail environments. Excel made express representations to Plaintiffs and the public regarding the hygiene, drying time, cost savings, and environmental impact of its products.

### **C. Defendant Certifiers**

81. Defendant NSF International is a Michigan nonprofit corporation with principal place of business at 789 North Dixboro Road, Ann Arbor, Michigan 48105.
82. NSF created NSF Protocol P335, titled “Hygienic Commercial Hand Dryers,” in April 2007. The standard establishes requirements for hand dryer performance and hygiene. Section 6.3 requires certified products to achieve 0.1 grams residual moisture or less within one operating cycle or 15 seconds, whichever is shorter, with 95% effectiveness across 20 trials.
83. NSF certifies Dyson Ltd. hand dryer products under NSF P335. The NSF P335 certification mark appears on Dyson products. Dyson markets itself as “The only hand dryer certified by NSF International Protocol P335.” NSF has maintained this certification for approximately eleven years despite products achieving zero percent compliance with the certified specification.
84. NSF’s President and CEO is Pedro Sancha.
85. Defendant SGS North America, Inc. is a Delaware corporation (File No. 888911) with principal place of business at 400 Broadacres Drive, Suite 200, Bloomfield, New

Jersey 07003, and testing laboratory operations at 620 Old Peachtree Road NW, Suite 100, Suwanee, Georgia 30024.

86. SGS tested hand dryer products to UL PCR standards. SGS test reports were filed in federal court proceedings and are relied upon by manufacturers to substantiate performance claims. SGS testing was commissioned by Denis Gagnon, Excel's President and a UL PCR committee member. SGS tested at 12 to 15 seconds, not the 8 seconds manufacturers claim in marketing.
87. SGS North America, Inc. operates as an accredited testing laboratory under ISO/IEC 17025.
88. Defendant UL Solutions LLC is a Delaware limited liability company with principal place of business at 333 Pfingsten Road, Northbrook, Illinois 60062.
89. UL created the Product Category Rules for Hand Dryers on July 13, 2016. The PCR establishes a 0.25 gram residual moisture threshold—2.5 times weaker than NSF P335. No scientific justification for this threshold appears anywhere in the 35-page document.
90. The UL PCR committee consisted of 10 manufacturer seats and 2 UL representatives. Excel Dryer held 4 of 10 manufacturer seats. William Gagnon, Excel's VP and COO, chaired the committee. World Dryer held 3 seats. Hokwang/FASTDRY held 3 seats. Zero public health officials, zero consumer representatives, and zero independent researchers participated in creating standards that affect public health.
91. UL's CEO is Jennifer Scanlon.
92. From 2017 to 2022, UL Environment issued Environmental Product Declaration No. 4787137936.102.1 certifying Excel's XLERATOR Hand Dryer. Wade Stout served as external verifier. The certificate specified 8-second drying times and 3.68 Wh energy consumption—specifications that UL's own PCR Figure 2 data showed were

physically impossible. UL directly certified the false claims at issue in this complaint.

93. Defendant Smart EPD LLC is a Virginia limited liability company, entity ID 11379451, with registered office at 25320 Ripleys Field Dr, Chantilly, VA 20152.
94. Smart EPD LLC was formed on April 26, 2022, under the name “EPD USA LLC.” On July 6, 2022, articles of amendment changed the company name to “Smart EPD LLC.” Anna Lasso is listed as registered agent, with qualification stated as “Member or Manager of the Limited Liability Company.”
95. Smart EPD’s registered office address is a single-family residence. The mailing address listed on Smart EPD certificates and the company website — 585 Grove St., Ste. 145, PMB 966, Herndon, VA 20170 — is a commercial mail receiving facility operated by UPS Store.
96. Smart EPD certifies Environmental Product Declarations for hand dryer manufacturers, including Excel Dryer. Certificate numbers include SmartEPD-2023-002-0006-01, SmartEPD-2023-002-0007-01, and SmartEPD-2023-002-0008-01. Smart EPD uses UL PCR methodology — the same methodology that Anna Lasso helped develop while employed at UL Environment.
97. Smart EPD issued its first Excel Dryer EPD on June 23, 2023 — eleven months after UL Environment’s EPD for the same product expired without renewal. The SmartEPD certificate specifies identical performance claims to the expired UL certificate: 8-second drying time and 3.68 Wh energy consumption. Thomas P. Gloria of Industrial Ecology Consultants verified the lifecycle assessment for both the 2017 UL certificate and the 2023 SmartEPD certificate.
98. Defendant Anna Lasso is an individual. Virginia State Corporation Commission records list her address as 25320 Ripleys Field Dr, Chantilly, VA 20152 — the same address as Smart EPD LLC’s registered office.

99. From 2016 to 2022, Anna Lasso was employed by UL Environment as Product Manager of EPDs and PCR Project Manager. In this role, she worked directly with William Gagnon as he chaired the UL PCR committee that created the Product Category Rules for Hand Dryers. Her published article on Excel UK's website documents her role: "The PCR development process was initiated by William Gagnon, Excel Dryer's vice president of marketing and sales." She continues: "William was asked to serve as chairman of the PCR committee, working closely with me and other leading manufacturers." She concludes: "I'm proud to have played a part in producing the first ever published global PCR."
100. On April 26, 2022, while employed at UL Environment, Anna Lasso filed articles of organization with Virginia for "EPD USA LLC," listing herself as registered agent and member or manager.
101. On SmartEPD certificates, Anna Lasso appears in three roles: Program Operator, Independent Critical Reviewer, and Independent External Verifier. ISO 14025, which governs Environmental Product Declarations, requires these functions to be independent of one another. Section 6.2 states that verification "shall be conducted by an independent verifier." Section 8.1.3 requires that the program operator "shall not be the declaration holder." Anna Lasso occupies all three roles on certificates she issues for products manufactured by companies she worked with while developing the underlying standard.
102. Anna Lasso is named individually because Smart EPD LLC, as a single-member LLC operating from a residential address, cannot meaningfully contribute to any judgment; because she personally participated in creating the UL PCR standards while employed at UL and personally certifies products under those standards through SmartEPD; because Smart EPD LLC is her alter ego with no meaningful separation between the entity and its sole operator; and because individual liability is appropriate given her direct role in both creating the certification standard and issuing certifications under it.

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### III. JURISDICTION AND VENUE

103. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiffs and Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Plaintiffs Whole Foods Market, Inc. and Amazon.com, Inc. are citizens of Texas/Delaware and Delaware/Washington, respectively. Defendant Dyson, Inc. is a citizen of Delaware and Illinois. Defendant Excel Dryer, Inc. is a citizen of Massachusetts. Defendant NSF International is a Michigan nonprofit corporation. Defendant UL Solutions LLC is a Delaware limited liability company with principal place of business in Illinois. Defendant SGS North America, Inc. is a Delaware corporation with principal place of business in New Jersey. Defendant Smart EPD LLC is a Virginia limited liability company. Defendant Anna Lasso is a citizen of Virginia. Complete diversity exists.
104. This Court has personal jurisdiction over Defendants because they conduct substantial business in Texas, have purposefully availed themselves of the privilege of doing business in Texas, have sold products to Texas consumers and businesses including Plaintiff Whole Foods, and have directed marketing and sales efforts toward Texas purchasers. The certifier Defendants issued certifications that were relied upon by Texas purchasers and that accompanied products sold and installed in Texas.
105. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, including Plaintiffs' purchasing decisions, product installations, and resulting property damage at Plaintiff Whole Foods' Austin headquarters and numerous Texas retail locations.

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## **IV. FACTUAL ALLEGATIONS**

### **A. The Commercial Hand Dryer Industry**

106. Commercial hand dryers are installed in public and commercial restrooms as an alternative to paper towels. The industry markets these devices on three primary claims: (1) hygiene—that they provide a sanitary method of drying hands; (2) speed—that they dry hands in 8 to 15 seconds; and (3) environmental benefit—that they reduce waste and carbon emissions compared to paper towels.
107. Defendants are two of the largest manufacturers of commercial hand dryers in the United States. Dyson’s Airblade products retail for \$949 to \$1,949 per unit. Excel’s XLERATOR products retail for approximately \$400 to \$700 per unit. Both companies market their products to food service establishments, healthcare facilities, schools, and commercial buildings.
108. Institutional purchasers like Plaintiffs rely on manufacturers’ performance representations when making procurement decisions. A grocery chain with over 500 locations cannot independently test every product claim. It must rely on the truthfulness of manufacturer specifications, certification claims, and marketing materials. That reliance is reasonable, expected, and forms the basis of the commercial relationship.

### **B. Defendants’ False and Misleading Representations**

#### **1. Dyson’s Representations**

109. Dyson represents on its website, marketing materials, and product documentation that its Airblade hand dryers are “Hygienic” and “independently proven safe.” Dyson states that its products “help to create a cleaner, more hygienic washroom.”

These representations are made prominently and repeatedly across Dyson's commercial communications.

110. Dyson represents that its hand dryers achieve complete drying in 10 to 14 seconds, depending on model. Specifically, Dyson claims the Airblade 9kJ achieves drying in "10-12 seconds," the Airblade V achieves drying in "12 seconds," the Airblade dB achieves drying in "14 seconds," and the Airblade Wash+Dry achieves drying in "14 seconds." These drying time representations form the basis for Dyson's cost savings, energy consumption, and environmental impact claims.
111. Dyson's drying time claims are attributed to "Dyson test method 769 based on NSF P335 to a measurement of 0.1g residual moisture." Method 769 is a proprietary, unpublished test methodology. Independent testing using the published NSF P335 methodology exactly as written produces residual moisture of approximately 2.5 to 3.0 grams at 8-12 seconds—not the 0.1 grams Dyson claims. The published methodology works correctly. The results reported by Dyson cannot be replicated by anyone following the published instructions. Dyson displays NSF International logos prominently while citing an unpublished proprietary method that produces results inconsistent with the actual protocol.
112. Dyson represents that its products feature "HEPA-filtered" air and dry hands with "HEPA-purified air, not dirty air." Dyson claims its HEPA filters "capture 99.97% of particles, as small as 0.3 microns." These representations imply that HEPA filtration provides a hygiene benefit to users.
113. Dyson represents that its products "Save on... CO<sub>2</sub> emissions" compared to paper towels and displays Carbon Trust certification for its environmental claims. Dyson states that its carbon footprint has been "measured and verified by the Carbon Trust in accordance with ISO 14067."
114. Dyson represents that its products are "Certified as hygienic by HACCP International" and "certified for use in food preparation environments." This

representation was material to Plaintiffs' purchasing decision as a food service establishment.

115. Dyson's product documentation cites academic research, including Patrick et al. (1997), which established that "Residual moisture determines the level of touch-contact-associated bacterial transfer" and that wet hands can transfer up to 1,000 times more bacteria than dry hands. Dyson cites this research to support the importance of hand drying while selling products that leave hands wet at claimed drying times. Dyson knows wet hands spread bacteria. Dyson sells dryers that leave hands wet. Dyson cites the science that condemns its own products.

## **2. Excel's Representations**

116. Excel represents on its website, marketing materials, and product documentation that its XLERATOR hand dryers achieve drying in "8 seconds." This claim is the foundation for all of Excel's cost, energy, and environmental representations.
117. Excel represents that its products provide "95% Cost Savings vs. Paper Towels," "80% Less Energy Than Conventional Hand Dryers," and "88% Reduction of Carbon Footprint vs. Paper Towels." Each of these claims is mathematically derived from the 8-second drying time assumption.
118. Excel represents that its products provide "A Hygienic Hand Drying Solution" and offers HEPA filtration systems "proven to remove 99.999% of virus from the airstream."
119. Excel holds Environmental Product Declaration (EPD) certifications that calculate lifecycle environmental impact based on the 8-second drying time and corresponding energy consumption per use. These certifications reference the UL Product Category Rules (PCR) for Hand Dryers as their methodological foundation.
120. Excel's product testing, as disclosed in footnotes, was performed to a standard of "0.25 grams of residual moisture or less." This is 2.5 times weaker than the NSF

P335 standard of 0.1 grams that defines “dry hands” for hygiene purposes. Excel’s drying time claims are based on this relaxed standard, not the actual hygiene threshold.

121. Excel had four of ten manufacturer seats on the committee that developed the UL Product Category Rules for Hand Dryers. Figure 2 of the UL PCR, which Excel’s own committee members approved, shows that at 8 seconds, residual moisture is 0.456 grams—a level that fails even Excel’s weakened 0.25-gram standard by 82% and fails the NSF P335 hygiene standard of 0.1 grams by 356%. Excel helped write the rules, Excel’s own approved data proves 8-second drying is impossible, and Excel markets 8-second drying.

### **C. The Empirical Proofs**

122. The testing and analysis underlying this complaint are fully documented, transparent, and open to independent verification. All underlying data, images, sampling records, and chain-of-custody materials have been preserved at multiple locations and are publicly available. [Exhibits A-R] The conclusions are not asserted as matters of authority, but as matters of record: they are testable, falsifiable, and reproducible by any qualified party using the same methods and materials. The associated research manuscripts are published pre-prints and are provided in complete form together with the full evidentiary record on which they are based, precisely so that Defendants, their experts, and the Court may evaluate the work directly rather than through second-hand characterization.
123. The research methodology, data, and analysis are published in ten studies with Digital Object Identifiers on Zenodo and at the Harvard Dataverse. All raw data, 1.3TB, is hosted at Cloudflare and Backblaze. The studies are publicly available, peer-accessible, and independently verifiable on 12 websites. All of this material is preserved on 50 hard drives distributed to 50 trusted individuals.

124. The standards at issue were not imposed on Defendants by regulators. Defendants created them. Defendants promoted them. Defendants certified products under them. Defendants' own data proves compliance is impossible.

## 1. Drying Time Performance Testing Results

125. Performance curves from three manufacturers across 451 drying time trials demonstrated convergent correlation coefficients exceeding  $r = 0.99$  across all pairwise comparisons ( $p < 0.001$ ). [Exhibits B, E, H, L] In 31 trials conducted at manufacturers' exact claimed dry times—8 seconds for XLERATOR, 10-12 seconds for Dyson Airblade, 12 seconds for World Dryer—zero trials achieved any certification threshold [Exhibits B, E, H]. The most favorable result from all trials was 1.67 grams. Defendants certified 0.1 to 0.25 grams. Testing documented 1.67 grams at best, 2.5 to 3.0 grams typically, ~1000% to 2500% over specification. At the times manufacturers claim and certifiers certified, every product failed every standard.

126. Compliance rates at claimed dry times:

| 127. Threshold | 128. Standard                | 129. Compliance at Claimed Times |
|----------------|------------------------------|----------------------------------|
| 130. 0.10g     | 131. NSF P335                | 132. 0%                          |
| 133. 0.20g     | 134. Excel rejected proposal | 135. 0%                          |
| 136. 0.25g     | 137. UL PCR                  | 138. 0%                          |

139. Extended drying trials (429 total, drying times far beyond claims):

| 140. Threshold | 141. Ever Achieved    |
|----------------|-----------------------|
| 142. 0.10g     | 143. 3.5% (15 trials) |
| 144. 0.20g     | 145. 14.9%            |

140. Threshold 141. Ever Achieved

146. 0.25g 147. 16.8%

148. In real-world use, giving all the parties involved full benefit of the doubt with a 15 second drying time, hands remain visibly wet in 100% of observed trials. Water can be seen visibly dispersing from the hands onto the walls, floors, and the user with every drying cycle. No instrumentation or special skill is required to see it. Any person can verify this for themselves.

149. NSF P335 Section 6.3 establishes clear, quantified requirements: residual moisture of 0.1 grams or less at manufacturer-specified times, with 95% compliance across 20 trials.

150. 451 trials were conducted—more than twenty times the sample size required for NSF certification. Zero trials achieved 0.1 grams or less at manufacturer-specified times. The average residual moisture was 2.77 grams—nearly 28 times the allowed threshold. The NSF standard requires 95% compliance. Actual compliance was zero percent. The deviation is not marginal. It is 2,770 percent.

151. The probability that products achieving zero percent compliance in 451 trials would achieve 95% compliance in a 20-trial certification test approaches zero. ( $p < .001$ ,  $r = .99$ ) [Exhibit H] This is not sampling variation, it is systematic failure. Defendants established these thresholds as the boundary between acceptable and unacceptable. Certified products exceed that boundary by 2,770 percent. Either the thresholds protect public health—in which case every certified use exposes users to conditions Defendants defined as harmful—or the thresholds protect nothing, and Defendants sold compliance with a standard that is meaningless. Both positions establish liability.

## 2. The Physical Impossibility of Certified Drying Times

152. The claimed drying times are not merely difficult to achieve. They are physically impossible to achieve. [Exhibits B, E, H, L]
153. The data demonstrates that water removal follows a bi-modal decay pattern [Exhibit H]. The first phase removes loose surface water quickly. The second phase removes bound water slowly. All dryers—regardless of manufacturer, technology, air velocity, or price—converge on 80 to 90 seconds of drying time to approach the 0.1 gram NSF drying threshold, with each brand and model having a slightly different profile but with all drying curves fitting together in a consistent pattern. R-squared across all trials of 0.9998—near-perfect fit.
154. Excel's own researchers had identified bi-modal drying. In an undated preprint filed as Exhibit H in Case 3:12-cv-30211-MAP on February 22, 2013 "An Ultrafast, Comfortable Hand Dryer" [Exhibit UU], Excel's consultants Sol Aisenberg and G. Freedman documented the same bi-modal physics. They wrote: "Two sequential phases of drying are used. Phase 1 is the blowing off of loose water droplets, accounting for about 75 percent of total water removal in the first 3 seconds, and Phase 2, the evaporation phase." Their Figure 4 shows residual moisture of 1.25 grams at 4 seconds, declining to 0.2 grams at 13.5 seconds—using Excel's self-invented 0.2 gram threshold, not NSF's 0.1 gram standard. They concluded: "preliminary experimental data... indicate that we can realistically expect this number to be reduced to the 10 to 12 second range in the near future." Excel now markets 8 seconds to UL's 0.25g. Empirical testing found 80-90 seconds to approach 0.1g at  $p < .001$ .
155. This bi-modal framework was tested across three manufacturers: Dyson, Excel (XLERATOR), and World Dryer. All three demonstrated effectively identical performance curves. Cross-manufacturer correlations exceeded  $r = 0.999$  ( $p < 0.001$ ). These are not similar curves. They are functionally identical curves

produced by three different companies using three different engineering approaches. [Exhibit L, H]

156. On December 4, 2025, prior to testing a third manufacturer for the first time, a formal prediction was documented: World Dryer products would fail identically to Dyson and Excel because this is a physics issue, not an engineering problem. On December 5, 2025, World Dryer VerdeDri units were tested at three locations. The prediction was confirmed. World Dryer achieved first compliance with its claimed standard of 0.25 gram UL threshold at 40 seconds—233% longer than the manufacturer’s 12-second claim, and never got below 0.1g because water kept splashing back off the wall due to dryer nozzle proximity. [Exhibit H]
157. The joint probability of three independent manufacturers producing correlation coefficients all exceeding  $r = 0.99$  under the null hypothesis (that performance varies by manufacturer) is less than one in one billion.

### 3. Contamination Results: Microbe Load in Output Dryer Air

158. Microbial Contamination Study (Study 1, n=87) and Ambient Air Comparison Study (Study 9, n=49) documented bacterial amplification across all tested units. The methodology was consistent: measure ambient air at a realistic drying time, then measure dryer output air at a realistic drying time, then calculate amplification factor. [Exhibits A, B, E, I, M, N]
159. Table 3: Airborne Contamination Results

| Metric                      | Study 1 (LB Agar) | Study 9 (TSA Agar) | Combined   |
|-----------------------------|-------------------|--------------------|------------|
| Tests conducted             | 87                | 49                 | 136        |
| Tests showing amplification | 87 (100%)         | 49 (100%)          | 136 (100%) |
| Tests showing reduction     | 0 (0%)            | 0 (0%)             | 0 (0%)     |

| Metric                             | Study 1 (LB Agar) | Study 9 (TSA Agar) | Combined             |
|------------------------------------|-------------------|--------------------|----------------------|
| Median ambient air CFU             | 1                 | 2                  | —                    |
| Median hand dryer output CFU       | 73                | 200                | —                    |
| Median amplification factor        | 49.6×             | 110×               | —                    |
| Probability under null hypothesis— | —                 | —                  | $p \approx 10^{-41}$ |

160. One hundred thirty-six consecutive tests showed amplification, validating the hypothesis generated before the first sample was ever taken [Exhibits A, I]. No dryers reduced bacterial load. The probability of this occurring by chance is approximately 10 to the negative 41st power.
161. Products certified as “hygienic” amplify bacterial contamination by 50 to 110 times compared to ambient room air, literally the opposite of hygienic. Defendants certified an industry built on hand washing science, providing the conceptual base for the products to sell. They cannot now escape it when those products fail their own testing standards. This is not hygiene. This is the opposite of hygiene.
162. The test remains simple: remove the dryer from the room. Is it more or less sanitary?

#### **4. Water Spray, the Absent Standard**

163. There are Dispersal-type dryers and Capture-type dryers. [Exhibits C, F]
164. Capture dryers collect water in receptacles for disposal. Very few remain in use, although they were common in the past.
165. Dispersal dryers have no mechanism for processing the water after the output dryer air jets hit it. They spray it everywhere in a truly bizarre design parameter that everyone sees and nobody seems to think about. Does spraying water all over a restroom make any sense at any level of thinking?

166. NSF P335 Section 6.5 imposes detailed, strict disinfection requirements on capture dryers—and zero requirements on dispersal dryers. [Exhibit X]
167. The UL PCR and the NSF P335, along with all other known certifications, have no standards for the water coming off of hands, the necessary last phase of the product operational system cycle. It is never mentioned anywhere.
168. Dispersal dryers operate at air velocities of 400 to 690 kilometers per hour—hurricane force. At these speeds, water is mechanically stripped from hands and thrown into the room with very little evaporation occurring as part of the removal process. The physics is not subtle. It is violent.
169. Baseline water study documented 7.30 grams of water on hands after washing [Exhibit F]. Approximately 90% of this water is removed by mechanical shear during the first phase of drying, not by evaporation. That water must go somewhere.
170. Visual Dispersal Study documented where the water goes [Exhibit C]. High-speed video captured water destinations including:
  171. Adjacent walls and floor surfaces
  172. User clothing: torso, forearms, thighs, shoes
  173. User face and hair from upward dispersion
  174. Airborne mist remaining visible for three or more seconds after drying
  175. Concentrated accumulation patterns on all surrounding surfaces
  176. Paper towels showed a single destination with occasional large drops falling off as the towels are grasped: absorption into the towel material, followed by disposal. Minimal environmental dispersal. [Exhibit C]
177. Remove the dryers from the room and replace them with white paper towels. What is the impact on the restroom and the users?

178. The dispersed water cannot be sterile. Microbial studies documented 50-110× bacterial amplification in dryer output air [Exhibits A, I]. The contamination measured on petri dishes arrived via the air stream. The air stream contains water droplets. Those droplets originated from users' hands. The water is the carrier medium for the measured contamination.
179. Further, the contamination problem compounds with user behavior. CDC and WHO guidelines require soap and twenty seconds of washing for effective hand hygiene. Compliance studies estimate proper handwashing rates at 5-30% in public restrooms. The dryer does not verify compliance. The dryer disperses whatever is present on hands—properly washed or not—into the shared environment.
180. Consider three users:
181. Compliant user (soap, 20 seconds, proper technique): Disperses water contaminated by dryer amplification of 50-110×.
182. Average user (quick rinse, minimal soap): Disperses significantly more contaminated water from inadequately washed hands plus dryer amplification.
183. Non-compliant user (10 second wet, no soap): Disperses fecal bacteria, pathogens, and whatever was touched directly into the room—amplified by the dryer—for the next person to encounter.
184. Every user's output becomes every other user's input.
185. The least hygienic user contaminates the air for everyone who follows. Certifiers and manufacturers provide no guidance or design standards for containment or elimination. It is never mentioned in any of the Defendants' documents. The dryer broadcasts the consequences of improper washing to everyone in the room.
186. Poor washing plus a paper towel equals contamination contained in the towel and disposed in trash. Poor washing plus dispersal dryer equals contamination broadcast to surfaces and people in the space.

187. At 150 million daily dispersal-type dryer uses in the United States, water dispersal occurs at population scale [Exhibits AAA, BBB]:
188. Daily: 2.8 to 4.6 million cups of water sprayed onto users, walls, floors, and fixtures
189. Annually: 1 to 1.7 billion cups of water dispersed into public restroom environments
190. Per dryer: Approximately 3 cups of water dispersed daily
191. That is not incidental moisture. It is systematic environmental contamination at industrial scale.
192. Neither NSF P335 nor the UL PCR contains any standard, test, measurement, or specification for water dispersal. The primary output of the device—where the water goes—is completely unaddressed. [Exhibits W, X]
193. Defendants certified drying time. Defendants certified energy consumption. Defendants certified HEPA filtration of intake air. Defendants ignore water that sprays onto walls, floors, clothing, faces, and into the lungs of everyone in the room. The most consequential sanitation related output of the device has not a single standard written to manage it.
194. Remove the dryers from the room. Is it more or less hygienic?

## **5. Physical Environmental Mold Contamination: The Plume of Filth**

195. The Wandering Plume of Filth Study [Exhibits J, Q, R] documented visible contamination patterns beneath hand drying equipment. 127 public restrooms were randomly entered and visually examined using NIOSH and FDA standard mold assessment techniques along with a proprietary set of criteria that offered much greater detail. The study compared all drying interventions as found in the restrooms with no criteria for non-inclusion.
196. Table 4: Environmental Contamination Results (n=127 restrooms)

| Intervention Type            | n  | Wall Plume Present | Visible Mold | Mold Rate |
|------------------------------|----|--------------------|--------------|-----------|
| Dispersal-type hand dryers   | 50 | 50 (100%)          | 50           | 100%      |
| Capture-type hand dryers     | 3  | 0 (0%)             | —            | —         |
| Brown paper towel dispensers | 30 | —                  | 12           | 40%       |
| White paper towel dispensers | 39 | —                  | 5            | 13%       |

197. Statistical comparison:  $\chi^2 = 72.0$ ,  $p < 0.001$ ; Ratio: Dispersal dryers show 8× higher mold rates than white paper towel installations (100% vs. 13%)
198. Every dispersal-type hand dryer installation exhibited visible wall mold. One hundred percent. The contamination pattern radiates outward from the device, originating narrow at the unit and fanning toward the floor like a plume—which is exactly what it is.
199. Independent laboratory analysis by Hayes Microbial Consulting (EPA Laboratory ID: VA01419) confirmed fungal presence in wall contamination samples. Species identified include *Aspergillus*/*Penicillium*, *Alternaria*, *Cladosporium*, and *Chaetomium*—organisms documented by CDC and the Institute of Medicine to cause allergic reactions, hypersensitivity pneumonitis, and mycotoxin production. [Exhibit U]
200. The plume is a persistent physical presentation that correlates perfectly with the microbial and fungal findings in the dryer output air. The fact that mold is found at 100% of dryer installations is causal for dryers when in public use, making laboratory claims meaningless. The visible contamination reflects dryer emissions minus cleaning, with even the most clean installations still showing trace mold, particularly under the dryer itself, right in the maximum air-turbulence during drying.
201. Critical finding: The contamination affects everyone who enters the restroom, not just dryer users. A person who uses paper towels if they are provided, a person who

uses the sink but not the dryer, a person who simply walks through—all are exposed to amplified microbial loads and environmental mold created by a hand dryer. The harm extends beyond users to everyone in the space. Defendants certified drying. Defendants certified products whose sole purpose is hygiene. They are entirely responsible for what happens when those products contaminate rather than clean.

## **6. The Paper Towel Alternative**

202. Paper towel contamination studies produced a novel finding: prior paper towel research never sorted by towel type. [Exhibits D, I, M-P]
203. White paper towels are statistically equivalent to ambient room air in microbial content. In Study 4 (n=29), 55.6% of white towels were completely sterile. The remainder contained 1-2 CFU. Mean contamination: 0.56 CFU. Wilcoxon signed-rank test against ambient air:  $p = 0.23$ —no significant difference. White paper towels do not add contamination. They may reduce it.
204. Brown paper towels are contaminated from the factory. 100% of samples contained microbial colonies, ranging from 6-186 CFU across both studies. The contamination is intrinsic to the product.
205. The distributions do not overlap. The 75th percentile of white towels (1 CFU) falls below the 25th percentile of brown towels (11 CFU). This complete distributional separation is exceptionally rare in biological data. Cohen's  $h = 1.671$ .  $p < 0.003$ .
206. Study 9 conducted dual-intervention tests: dryer and paper towels tested in the same restroom on the same day under identical ambient conditions. Hand dryers produced 138-407× more contamination than white paper towels. The difference is the device, not the environment.
207. Paper towels dry hands in 20-30 seconds to 0.1g residual moisture—faster than dryers at actual performance. Water is absorbed into the towel and disposed in trash. No dispersal. No aerosol. No plume.

208. The Wandering Plume study documented the environmental consequence. White paper towel dispensers showed 13% mold rates (5/39 installations). Brown paper towel dispensers showed 40% (12/30). Dispersal-type hand dryers showed 100% (50/50). The 8-fold difference between white paper towels and dispersal dryers is not variation—it is categorical. The dryer creates the mold. The paper towel does not. [Exhibits J, M-P, Q, R]
209. Remove the dryer. Install a white paper towel dispenser. Every problem documented in this complaint disappears. The infrastructure exists. The cost is equivalent. The dispenser fits the space. The hypothetical answers itself.

#### **D. The Green Energy Catastrophe**

210. False drying time claims corrupt every environmental calculation built upon them. Energy consumption is power multiplied by time. When manufacturers claim 8 seconds but products require 70-90 seconds, energy consumption increases tenfold. The entire environmental marketing narrative collapses. [Exhibits B, E, G, H, L]
211. Manufacturers claim hand dryers use 3 Wh per dry and produce 85-90% less CO<sub>2</sub> than paper towels. These claims assume 8-12 second drying times. At actual drying times of 70-90 seconds, energy consumption rises to 25-28 Wh per dry—7.5 to 8.75 times higher than claimed.
212. Using Defendants' own commissioned lifecycle data [Exhibits AA, BB, CC, DD, EE, FF], the claimed 85-90% environmental advantage disappears entirely. At actual drying times, hand dryers produce CO<sub>2</sub> emissions equivalent to paper towels. When independent academic studies are included, hand dryers perform 2-3 times worse.
213. False times create false energy and CO<sub>2</sub> emissions values, leading to false marketing claims made by manufacturers with explicit attribution to certification by Defendants.

214. The false data propagates into building certification. Excel's LEED v4.1 guidance [Exhibit HH] instructs building professionals to "input 3.68 Wh per 8 second cycle use... for energy modelling purposes." Thousands of LEED-certified buildings contain false energy data in their certification calculations. The environmental benefits represented to building owners, tenants, and the public do not exist.
215. Products marketed as environmentally superior consume 7-10 times more energy than claimed and provide no CO<sub>2</sub> advantage over paper towels.
216. Three independent AI systems (Claude, ChatGPT, Grok) verified these calculations using manufacturer-published lifecycle assessment data, working from primary sources without access to each other's outputs. All three converged on the same conclusion. [Exhibits BBB, CCC]

## **1. The Claimed Calculation**

217. Excel claims XLERATOR dries hands in 8 seconds at 1,450 watts:  $1,450\text{W} \times 8\text{s} \div 3,600 = 3.22\text{ Wh per use}$ . Dyson claims Airblade dries hands in 10-12 seconds at 1,000 watts:  $1,000\text{W} \times 12\text{s} \div 3,600 = 3.33\text{ Wh per use}$ . These figures form the basis of all environmental marketing.
218. At claimed times, manufacturers report approximately 2 grams CO<sub>2</sub> per use. This is the foundation of the "85-90% less CO<sub>2</sub> than paper towels" claim. [Exhibits AA, EE]

## **2. The Actual Calculation**

219. 430 time-to-dry trials establish actual drying times of 70-90 seconds to reach manufacturer-specified dryness thresholds. Zero units achieved compliance at claimed times. [Exhibits E, H]
220. At actual times:
221. XLERATOR at 70 seconds:  $1,450\text{W} \times 70\text{s} \div 3,600 = 28.2\text{ Wh per use}$
222. Dyson Airblade at 90 seconds:  $1,000\text{W} \times 90\text{s} \div 3,600 = 25.0\text{ Wh per use}$

- 223. Energy consumption is 7.5 to 8.75 times higher than claimed.
- 224. CO<sub>2</sub> emissions scale with use-phase electricity, which constitutes 87-92% of total hand dryer lifecycle impact. At actual drying times:
- 225. Conservative estimate (manufacturer LCA data): 12-18 g CO<sub>2</sub> per use
- 226. Expansive estimate (independent academic sources): 30-50 g CO<sub>2</sub> per use
- 227. CO<sub>2</sub> emissions are 6-9 times higher than claimed under conservative assumptions. Under expansive assumptions incorporating independent academic studies, emissions are 15-25 times higher.

### 3. The Paper Towel Comparison

- 228. Paper towel lifecycle emissions for two towels (approximately 4 grams total) range from 12-20 g CO<sub>2</sub> per use depending on recycled content and source methodology.

- 229. The comparison:

| Metric                             | Paper Towels (4g) | Dryer (Claimed) | Dryer (Actual) |
|------------------------------------|-------------------|-----------------|----------------|
| Energy (Wh)                        | 75-80             | 3-4             | 25-28          |
| CO <sub>2</sub> - Conservative (g) | 17-19.5           | ~2              | 12-18          |
| CO <sub>2</sub> - Expansive (g)    | 12-20             | 4-10            | 30-50          |

- 230. At manufacturer-claimed drying times, hand dryers produce 50-70% less CO<sub>2</sub> than paper towels. At empirically-measured actual drying times, hand dryers produce emissions equivalent to paper towels under conservative analysis—and 2-3 times worse under expansive analysis. The claimed 85-90% CO<sub>2</sub> advantage does not exist.
- 231. Energy comparisons tell a different story. Paper towel manufacturing derives 40-60% of process energy from biomass combustion, which is classified as carbon-neutral under ISO 14040/14044 lifecycle accounting. Hand dryers consume 100% grid electricity at full carbon intensity. The result: paper towels have higher total

lifecycle energy but lower fossil carbon intensity per unit energy. The claimed 95% energy advantage shrinks to approximately 65%—overstated but directionally accurate. The CO<sub>2</sub> advantage inverts entirely. [Exhibits Y, Z]

#### **4. The LEED Propagation**

232. False energy data flows into building certification systems. Excel's LEED v4.1 Credit Contribution document instructs building professionals: "Project teams may input 3.68 Wh per 8 second cycle use... for energy modelling purposes." [Exhibit HH]
233. This is not marketing. It is an instruction to embed false data into LEED energy modeling software. Building professionals following Excel's guidance enter 3.68 Wh into certification calculations. The actual figure is 25-28 Wh—7 to 8 times higher.
234. The same document claims XLERATOR provides "80 percent energy use reduction over conventional hand dryers." At actual drying times, this claim is false.
235. Excel's LEED guidance explicitly cites Defendants' certifications as authority: "Product-Specific Type III Environmental Product Declaration (EPD) certified by UL Environment." The chain operates as follows: SGS tests at 12-15 seconds. UL Environment certifies EPD stating 8.355 seconds and 3.680 Wh. SmartEPD issues replacement certification with identical specifications. Excel cites these certifications in LEED guidance. Building professionals enter false values into LEED software. LEED awards credits based on false underlying data. At no point does any party verify that the 8-second claim is achievable. [Exhibits AA, BB, CC]
236. Approximately 500,000 hand dryers operate in LEED-certified buildings in the United States. Every one earned credits based on 3.68 Wh per use—a figure that assumes 8-second drying times. Actual energy consumption is 7-10 times higher than LEED databases reflect. An estimated 560 GWh of annual energy consumption is missing from LEED environmental accounting—enough to power 50,000 American homes.

## **5. Global Scale**

- 237. The per-use discrepancy, applied to population-scale usage, produces staggering cumulative waste. Based on market analysis: 1.5-15 million units in the United States, 55-550 billion annual uses domestically, 220 billion to 2.2 trillion annual uses globally.
- 238. Annual global impact of the gap between claimed and actual performance:
- 239. Excess energy: 5.8-45 TWh
- 240. Excess CO<sub>2</sub>: 2.85-20 million metric tons
- 241. Equivalent homes powered: 550,000 to 4.3 million
- 242. Equivalent national CO<sub>2</sub> output: Iceland (conservative) to Mongolia (expansive)
- 243. This waste occurs annually, in perpetuity, based on a marketing claim that was never true.
- 244. Products marketed as environmentally superior provide no CO<sub>2</sub> advantage over paper towels and may perform 2-3 times worse. This is not environmental responsibility. This is the opposite of environmental responsibility.

## **6. UL Unexpectedly Validates the Energy Claims Calculations**

- 245. After completing the empirical testing program and energy calculations described above, a current UL Environment EPD for a Hokwang hand dryer was discovered—Declaration No. 4787616201.106.1, issued April 1, 2022 and valid through April 1, 2027. [Exhibit DD]
- 246. The Hokwang EPD certifies a conventional warm-air dryer (2.0 kW, 20.5 m/s air speed) at 30-35 seconds drying time to 0.074 grams residual moisture—the same threshold specified in the UL PCR. UL's certification produces 18 Wh energy consumption and 13.5-14.8 g CO<sub>2</sub> per use depending on regional methodology.

247. Empirical calculations—completed before discovering the Hokwang EPD—predicted 25-28 Wh and 12-18 g CO<sub>2</sub> at actual drying times of 70-90 seconds. The convergence is striking: UL’s certification at 30-35 seconds and the empirical calculations at 70-90 seconds produce CO<sub>2</sub> values in the same range (12-18 g), while SmartEPD’s certification at 8 seconds produces values 6-7 times lower (~2 g).

| Source            | Time      | Energy (Wh) | CO <sub>2</sub> (g) |
|-------------------|-----------|-------------|---------------------|
| NSF/SGS/SmartEPD  | 8-12 sec  | 3-4         | ~2                  |
| UL Hokwang        | 30-35 sec | 18          | 14                  |
| Empirical testing | 70-90 sec | 25-28       | 12-18               |

248. The Hokwang EPD was verified by the same personnel who verified Excel’s certifications. Thomas Gloria signed both the Hokwang UL EPD and the Excel SmartEPD as independent verifier. [Exhibits AA, DD] The UL PCR Review Panel that approved the Hokwang certification was chaired by Jon Dettling—the same methodology, the same verifiers, the same standards.

249. The timeline is significant:

250. April 1, 2022: UL issues Hokwang EPD at 30-35 seconds

251. April 26, 2022: Anna Lasso incorporates EPD USA LLC in Virginia

252. July 2022: Excel’s UL EPD expires, not renewed

253. June 23, 2023: SmartEPD certifies Excel at 8 seconds

254. UL certified a hand dryer at 30-35 seconds and would not certify lower. Excel needed 8 seconds for its marketing claims. Anna Lasso, who had worked with Excel’s William Gagnon on the UL PCR committee for seven years, created a certification body that would certify what UL would not.

255. Even accepting UL's 30-35 second time as accurate—which the empirical data suggests it is not for a conventional warm-air dryer—UL's energy and CO<sub>2</sub> methodology validates the empirical calculations while proving SmartEPD's certification physically impossible. If 30 seconds produces 14 g CO<sub>2</sub>, then 8 seconds cannot produce 2 g. The math does not work. The physics does not work. The certification is false. Further, by offering a certified calculation of its own that is in alignment with the empirical calculations done separately, this entire project and this entire complaint is validated by a defendant.

## **7. The Causal Chain**

256. The false drying time claim is the root cause of environmental contamination and energy/environmental failure. Each step follows inevitably from the one before.  
[Exhibits A, I, J, M, N]
257. Manufacturers claim 8 to 14 second drying times. Actual drying requires 80 to 90 seconds. The claim is false by 500 to 1,000 percent.
258. If a user stops drying at claimed times, 2.5 to 3.5 grams of water remain on hands.
259. That water has been infested with the microorganisms in the dryer output air stream.
260. Carrying that water after dryer use increases microorganism transfer by 1000x.
261. If a user dries until hands are dry—80-90 seconds—microorganism amplifications on the hands increase over room air by 50-110x.
262. Energy and CO<sub>2</sub> production become equal to or greater than that of paper towels.
263. At 400 to 690 km/h air velocity in a Dispersal-type dryer water is violently blown onto walls, floors, users, and into the air as aerosol.
264. Dispersed water carries microorganisms from users' hands and the output air jets, contaminating the room for the users who come after.

- 265. Continuous deposition grows visible mold in 100% of installations, volume controlled by the cleaning practices of the restroom owners.
- 266. The restroom becomes a permanent contamination zone. Everyone who enters is exposed, regardless of whether they use the dryer.
- 267. The user faces several impossible choices with every restroom use: don't enter to avoid dryer contamination, wash and don't dry, dry for specified time and leave wet or dry for the actual time-to-dry and carry increased microbial exposure and use more energy.
- 268. The hypothetical answers itself. Remove the dryer and every step in this chain disappears. The water stays on hands or is absorbed by a towel. The mold doesn't grow. The contamination zone doesn't form. The impossible choices don't exist. The dryer is not incidental to the harm. The dryer is the harm.

#### **D. Plaintiffs' Reliance and Resulting Harm**

- 269. Plaintiffs purchased hand dryers manufactured by Defendants through authorized distributors in the facilities supply chain. Defendants marketed their products directly to food service facilities including Plaintiffs, provided marketing materials and representations directly to Plaintiffs' decision-makers, and specifically targeted food service establishments for use as customers and case studies. Defendants' express representations regarding hygiene, drying time, and environmental benefits were directed to Plaintiffs as the ultimate purchaser and end user, and were intended to induce Plaintiffs' purchase decisions regardless of the distribution channel.
- 270. Plaintiffs installed Dyson Airblade hand dryers, including the Airblade V and Airblade dB models, in multiple retail locations. Plaintiffs installed Excel XLERATOR hand dryers in multiple retail locations. Documented installations include locations in Virginia, New York, Maryland, California, and Florida, among other states. The

purchasing decisions for these installations were made by Plaintiffs' personnel who were exposed to and relied upon Defendants' marketing claims regarding hygiene, drying time, and environmental impact.

271. Plaintiffs' reliance on Defendants' representations was reasonable. Plaintiffs are sophisticated institutional purchasers, but they cannot independently test every product specification before purchase. Manufacturers make representations precisely because purchasers must rely on them. Defendants' representations were made through official product documentation, technical specifications, certification claims, and marketing materials—the channels through which commercial purchasers obtain information.
272. Plaintiffs' brand is built on health, quality, and environmental responsibility. Defendants' hygiene and sustainability representations aligned with Plaintiffs' brand values and were material to their purchasing decisions. Plaintiffs would not have purchased hand dryers that amplify bacterial contamination in food service environments. Plaintiffs would not have purchased hand dryers whose environmental claims are invalid.
273. As a direct result of Defendants' false representations, Plaintiffs have suffered and continue to suffer: (a) the cost of hand dryers that do not perform as represented; (b) the cost of repairing or replacing walls, floors, and fixtures damaged by water dispersal and mold colonization—property distinct from the hand dryers themselves—including drywall replacement, repainting, tile repair, and fixture replacement in restrooms where mold growth has compromised building materials; (c) increased energy costs resulting from actual drying times 7× to 10× longer than claimed; (d) the cost of remediation and replacement of non-conforming equipment; and (e) damage to Plaintiffs' brand and reputation arising from installation of hygiene equipment that degrades rather than enhances food service environments.

274. The harm to Plaintiffs is ongoing. Every use of a Defendants' hand dryer in a Plaintiffs' location exposes employees and customers to amplified microbial contamination and leaves hands wet at the point when food contact is most likely. Every day of operation adds water dispersal to restroom surfaces and accumulates biofilm inside the devices.

## **E. Timeliness**

275. Plaintiffs' claims are timely for multiple independent reasons.
276. Continuing Conduct: Defendants' false representations are ongoing. As of the date of this Complaint, Defendants' websites continue to display the hygiene, drying time, and environmental claims identified herein. Defendants continue to market their products using certification claims that depend on false underlying data. Each day that Defendants maintain these representations constitutes a new violation.
277. Continuing Relationship: Plaintiffs have an ongoing commercial relationship with Defendants, having purchased replacement units, replacement parts, and maintenance services in reliance on the same false representations over time.
278. Discovery Rule: The scientific research establishing the specific nature and magnitude of Defendants' specification failures was conducted between 2023 and 2025. Prior to this research, the precise mechanisms of failure—the bimodal drying curve, the quantified amplification rates, the mold colonization statistics—were not known or reasonably discoverable by purchasers exercising ordinary diligence. Plaintiffs could not have known that 0% of hand dryers achieve claimed dryness specifications, that 100% amplify contamination, or that 100% of installations show mold colonization until this research was conducted and made available.
279. Equitable Tolling: To the extent any statute of limitations would otherwise bar any claim, Defendants' ongoing representations and the inherently concealed nature of microbiological contamination warrant equitable tolling. Users cannot see bacteria.

Purchasers cannot independently verify drying time claims to scientific precision. The testing that reveals Defendants' failures requires equipment and expertise beyond ordinary consumer or institutional capacity.

## **F. Unbinding Mixed Law**

280. This case does not ask the Court to impose liability on certifiers for defective products. That question is settled. Certifiers do not manufacture products. When a certified product fails due to manufacturing defect, the manufacturer is liable. That is not being contested.
281. Plaintiffs invoke a different doctrine: certifiers bear independent liability for the certifications they issue. This is not derivative of manufacturer conduct. It is primary liability for the certifier's own representations. See Restatement (Second) of Torts § 552 (negligent misrepresentation); § 324A (voluntary undertaking).
282. Defendants authored the standards. Defendants designed the test methods. Defendants controlled the protocols. Defendants issued the certifications. Every element was within Defendants' exclusive control. There is no intervening party to whom fault can be allocated. Defendants bear sole responsibility for the accuracy of certifications bearing their marks.
283. Defendants certified specifications. Those specifications have been tested through 451 residual moisture trials. Zero compliance at certified times. Residual moisture of 2.5 to 3.0 grams when defendants certified 0.1 to 0.25 grams. Bacterial amplification of 50-110× when defendants certified products as "hygienic." Visible mold colonization in 100% of installations when defendants certified HEPA filtration as protective.
284. Every certified specification is proven false. The empirical data is fully public. The methodology is fully documented. Defendants' underlying test data is not.

285. A prima facie case has been established that Defendants' certified specifications are false. The burden now shifts to Defendants to present evidence that their certifications are accurate. Absent such public evidence, no genuine dispute of material fact exists.

## **G. The Science Is The Product**

286. 150 years of universal scientific consensus that wet hands spread disease is the reason hand dryers exist. Washing hands exists to reduce microorganism count. Drying hands exists to reduce microorganism transfer.
287. This is foundational to the products. Defendants certified and subsequently built an entire industry on this science. Every marketing claim assumes it. Every certification standard incorporates it. Every sale depends on it.
288. Semmelweis established the importance of hand hygiene in 1847. Patrick et al. established that wet hands transfer up to 1,000 times more bacteria than dry hands in 1997. Defendants cite this research in their own marketing. They use the science to sell the products. They are bound by the science when the products fail. They cannot claim ignorance of the science. That is the reason these products exist.

## **H. The Mark Is A Contract**

### **1. UL Solutions, Inc.**

289. Underwriters Laboratories has spent 130 years building one of the most recognized consumer safety brands in the world. The UL mark appears on 22 billion products annually. It is designed to be seen by consumers at the point of purchase and the point of use. It communicates a single message: this product has been tested and found safe.
290. UL did not build this brand by accident. UL built it through deliberate consumer-facing marketing. The UL mark functions identically to the Nike swoosh or the Good

Housekeeping Seal — it is brand advertisement directed at the purchasing public designed to generate a buying impulse. Consumers do not read UL's testing protocols. Consumers do not review UL's certification documents. If UL was a manufacturer-facing company there would be no seal, only test results returned to the purchaser of the tests to be kept in a file. Consumers see the mark and trust it. That trust is the product UL sells.

291. UL receives the benefits of that trust, earned from honest implementation of its testing and standards creation over a century. Manufacturers pay premium prices for UL certification because certification increases consumer confidence and sales. Retailers stock certified products because certification reduces liability exposure because consumers are aware they have been tested. Facilities install listed and stamped equipment because certification represents due diligence, conveyed to the purchasers. The entire value proposition of UL certification depends on consumer reliance. Without consumer trust, the UL mark is worthless. UL knows it. UL cultivates it. UL profits from it.
292. The UL mark is not merely a representation—it is a contract. Every element of formation is present. Under Restatement (Second) of Contracts § 19, “The manifestation of assent may be made wholly or partly by written or spoken words or by other acts.” Under § 4, “A promise may be stated in words either oral or written, or may be inferred wholly or partly from conduct.” UL's conduct for 130 years constitutes manifestation of assent to a binding relationship with consumers.
293. Offer. The mark communicates a specific promise: this product has been tested and meets published standards. The mark is designed for visibility at point of purchase and point of use. It is not an internal quality control notation—it is a consumer-facing representation intended to induce reliance and purchase. That is an offer.
294. Acceptance. Consumer purchase of a product bearing the mark constitutes acceptance. The mark influenced the decision. The transaction completed. The

consumer manifested assent by conduct—the same mechanism by which UL manifested its offer.

295. Consideration. Certification fees are embedded in product pricing. Consumers pay those fees with every purchase. UL receives payment through manufacturers acting as conduits. The consideration flows from consumer to certifier—the manufacturer is merely the collection mechanism. UL’s entire revenue model depends on this flow: manufacturers pay UL because certification increases sales; consumers pay manufacturers prices that include certification costs; UL receives the economic benefit of consumer purchasing decisions. The chain is unbroken.
296. Mutual Assent. 130 years of deliberate, consumer-facing brand development admits of no other interpretation. UL did not build 22 billion product marks annually for manufacturers to file in cabinets. UL built them for consumers to see and trust. UL’s conduct—sustained, intentional, profit-driven—manifests assent to a relationship with consumers. That relationship has terms: the mark promises safety; the consumer relies on that promise; UL profits from that reliance.
297. UL then disclaims responsibility to the consumers whose trust it cultivates when certifications fail. See *Kikson v. Underwriters Laboratories, Inc.*, 501 F.3d 672, 675 (7th Cir. 2007) (UL contract disclaiming “no obligation or liability for damages... arising out of or in connection with the use of... information resulting from this investigation”) and *Toman v. Underwriters Laboratories, Inc.*, 532 F. Supp. 1017, 1019 (D. Mass. 1982) (“UL can be held liable only for its own negligence, not vicariously for that of [the manufacturer]”).
298. Courts have disagreed. *Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680, 685 (1969), held that one who endorses products for economic gain owes a duty of care to consumers who rely on that endorsement: “Having voluntarily involved itself into the marketing process, having in effect loaned its reputation to promote and induce the sale of a given product... public policy imposes upon it the duty to use ordinary care in the issuance of its seal and certification of quality so that members of the

consuming public who rely on its endorsement are not unreasonably exposed to the risk of harm.” Hanberry recognized the relationship. It imposed duty. The next step—recognizing that relationship as contractual—follows inevitably from the same facts.

299. UL is not liable for defective products. UL did not manufacture the hand dryers. UL did not design them. If a hand dryer explodes due to a manufacturing defect, UL bears no responsibility. That is a reasonable standard and is settled law. This Court should not disturb it. See *Toman v. Underwriters Laboratories, Inc.*, 532 F. Supp. 1017, 1019 (D. Mass. 1982) (“UL can be held liable only for its own negligence, not vicariously for that of [the manufacturer]”).
300. UL has been given a special relationship with Federal Regulatory Agencies under 29 CFR § 1910.7 — Definition and requirements for a nationally recognized testing laboratory. UL remains an OSHA-recognized NRTL, most recently renewed March 5, 2021 (86 FR 12710). OSHA permits employers to rely on UL certification to satisfy federal workplace safety requirements. The UL mark carries regulatory weight. UL cannot disclaim responsibility to consumers while holding quasi-regulatory authority over workplace safety.
301. UL is liable for defective standards and defective testing.
302. UL created the Product Category Rules for Hand Dryers. UL convened the committee. UL published the standard. UL specified the test methodology.
303. Products were tested against UL’s certified specifications approximating UL’s specific testing guidelines with great care. 451 trials. Zero compliance. The certified specifications are proven false.
304. These distinctions are critical and have not been squarely addressed in prior litigation:

305. Defective product, valid standard: Manufacturer liability. The certifier tested properly; the product failed in the field due to manufacturing variance or misuse. Certifier not liable. Settled law.
306. Defective standard: Certifier liability. The certifier created a standard that fails to protect public safety. Products “pass” certification but harm users. The certification itself is the defect.
307. Defective testing: Certifier liability. The certifier certified specifications that products do not meet. The testing process failed to detect non-compliance. The certification is false.
308. This case refers to all three but specifically involves the latter two. UL’s standard is defective — it ignores water dispersal, ignores output air contamination, and was written by a committee composed of manufacturers that excluded public health officials.

## **2. NSF International**

309. NSF International’s position is equivalent, while also being more explicitly consumer-directed. NSF is an NRTL, Recognized December 10, 1998 (63 FR 68296) under 29 CFR § 1910.7.
310. NSF’s website states: “Choosing a product certified by NSF lets you know the company complies with strict standards and procedures imposed by NSF.” It promises “assurance that the product has been rigorously tested.” NSF markets itself as “protecting public health” and positions its mark as consumer protection.
311. These are not implications to be inferred from conduct. These are explicit promises, in writing, directed at consumers. NSF does not merely allow consumer reliance—NSF solicits it. NSF advertises it. NSF built its business model on it.
312. If UL’s contract with consumers must be inferred from 130 years of conduct, NSF’s contract requires no such inference. NSF stated the terms. “Choosing a product

certified by NSF lets you know the company complies with strict standards.” That is an offer. “Assurance that the product has been rigorously tested.” That is a promise. “Protecting public health.” That is the consideration consumers believed they were receiving. NSF wrote the contract in plain English on its own website.

- 313. Consideration flows identically to UL: certification fees embedded in product pricing, paid by consumers, received by NSF through manufacturers as conduit. The P335 certification commands premium pricing precisely because consumers value “assurance.” NSF captures that value. NSF is bound by the promise that created it.
- 314. NSF certified Dyson products under Protocol P335 — titled “Hygienic Commercial Hand Dryers” — for over eleven years. Those products have been tested. 451 trials. Zero compliance with NSF’s certified specification. Bacterial amplification of 50-110× in products NSF certified as “hygienic.”
- 315. NSF created the standard. NSF certified the products. The certifications are proven false. NSF owns that failure.
- 316. This is why Hanberry imposes duty. The certifier has “loaned its reputation to promote and induce the sale” of products. The certifier profits from consumer reliance. But Hanberry addressed an implied endorsement relationship. NSF’s relationship is not implied—it is advertised. The law does not permit certifiers to make explicit promises to consumers and then disclaim responsibility when those promises prove false.
- 317. Defendants cannot take the benefits of consumer trust while disclaiming responsibility to consumers.

### **3. The Contract Defense and Its Failure**

- 318. The traditional defense is predictable: UL and NSF contracted with manufacturers, not consumers. Consumers are incidental beneficiaries. There was no meeting of minds.

319. Courts have been reluctant to open this door—but that reluctance reflects policy preference, not contract law. The elements have always been present. The UL mark has never not been a contract. Offer, acceptance, consideration, mutual assent—all satisfied with every purchase of every marked product for over a century. Courts have simply declined to recognize what was always there, protecting an industry that built its entire revenue model on consumer reliance while disclaiming responsibility to the consumers it cultivated.
320. Defendants did not build consumer-facing marks by accident. They did not spend decades marketing trustworthiness to the purchasing public by oversight. They did not design marks for point-of-purchase visibility because they were indifferent to consumer perception. Every element of the certifier business model—the visible mark, the consumer-directed marketing, the promise of “protection,” the cultivation of trust—was engineered to create consumer reliance. Defendants built the relationship. Defendants profited from the relationship. Defendants are bound by the relationship. Intent is inferred from conduct, and Defendants’ conduct for over a century admits of no other interpretation.
321. The mark is the contract. The certification is the breach.

## **I. The Standard Is Indivisible**

322. A drying standard for a product whose sole purpose is reducing microbe transmission is a hygiene standard. These two things cannot be separated. Hands must leave the device as clean or cleaner than when they entered. This is not controversial.
323. You cannot write a testing standard for a product that exists solely for the purpose of reducing microbe transmission without fully owning the entire microbe transmission properties of the entire product use cycle.

324. Defendants certified drying time. They clearly state what happens when drying fails — wet hands spread contamination.
325. Defendants have created no standard to measure the microbial content of the output jets of functioning dryers in situ. This failure provides for output air that amplifies ambient restroom air contamination 50-110×.
326. Defendants certified “hygienic” hand dryers. These dryers colonize the walls around them with mold in 100% of installations.
327. Defendants created standards addressing one part of the product cycle while ignoring the rest. NSF P335 Section 6.2 requires HEPA filtration to prevent contaminated air intake — while ignoring that contamination must be occurring downstream of the filter. NSF P335 Section 6.5 requires 99.9999% bacterial kill for water in capture-type dryers — while requiring nothing for dispersal-type dryers that spray contaminated water throughout the room. The UL PCR mentions hygiene once in 35 pages. Water dispersal — the primary mechanism by which these products affect public health — is not mentioned at all.
328. It is not reasonable to believe these omissions are oversights. They fit the model of liability engineering. Defendants wrote standards that address what manufacturers wanted addressed and ignore what manufacturers wanted ignored rather than testing the claims manufacturers make for the entire device use cycle.
329. That is not safety certification. That is regulatory capture. Defendants wrote the standards. Defendants certified the products. Defendants own the outcomes.

## **J. Scientific Consensus Compels Judicial Action**

330. Courts began addressing tobacco-related harms when the science became unequivocal. Decades of industry denial collapsed under the weight of unanimous research. Judicial intervention followed scientific consensus.

331. Hand hygiene science presents a far stronger case than even the best second hand smoke science:

| Factor                  | Tobacco Litigation   | Hand Hygiene            |
|-------------------------|----------------------|-------------------------|
| Scientific span         | ~40 years            | 180 years               |
| Studies showing harm    | Hundreds, contested  | 77 studies, uncontested |
| Industry contradictions | Many                 | Zero                    |
| Consensus timeline      | Emerged over decades | Existed from inception  |

332. The science establishing that hand drying prevents disease transmission has never been disputed. Researchers, Public Health authorities and the Defendants themselves cite this science in their standards creation and in marketing. These products would not exist except for this science as their sole purpose is to reduce microbial transfer after hands are washed, the most basic historical science ever done. Defendants built their industry on this science.

333. The science establishing that hand dryers amplify contamination has accumulated for 36 years across 18 peer-reviewed studies. Every study done on hand dryers in functioning restrooms shows the same result, with no contradicting studies in the literature.

334. The weight of prior science combined with empirical research establishes a prima facie case that Defendants' certified specifications are false. The burden shifts to Defendants to produce evidence — using publicly documented methodology — demonstrating their certifications are accurate.

335. The science justified the product's invention. The science now condemns its failure.

## K. The Liability Position

336. Defendants established residual moisture thresholds as safety standards. NSF set 0.1 grams. UL set 0.25 grams. These thresholds exist because Defendants determined that exceeding them was harmful. Leaving water on hands after drying was not permitted by their own self-selected standards.
337. If exceeding those thresholds causes harm, then Defendants certified products that exceed the thresholds by 1,000 to 2,770 percent, and every use of every certified product exposes users to conditions Defendants themselves defined as harmful.
338. If exceeding these thresholds does not cause harm, then Defendants' standards are arbitrary and meaningless, and Defendants collected certification fees and enabled premium pricing for compliance with standards that protect nothing. They allowed certified companies to use promises of dry hands in their marketing materials, amplifying prices to prospective and real purchasers.
339. Both positions establish liability.
340. If Defendants argue their standards were unachievable, they confirm that the thresholds define meaningful harm—harm their certified products inflicted with every use. If Defendants argue their standards were meaningless, they expose the certifications as fraud. Either position renders the certification fees unjustified and the resulting exposures compensable.
341. This is not a case about products that marginally underperform specifications. This is a case about a certification ecosystem that was systematically restructured—through committee capture, standard weakening, and revolving-door self-dealing—to certify products that could not be certified under legitimate standards. The physics never changed. The standards did. And when the standards couldn't be changed enough, the certifiers changed too.

## **L. The Certification Network**

342. This action names seven Defendants who created, operated, and profited from an interconnected certification system as the anchors in a large web of multiple people and groups all declaring that hand dryers are safe and efficient. NSF International created the first non-manufacturer based standard. UL Solutions later created a weaker alternative. SGS North America, Inc. tested the products and certified false drying times that cascaded into every later claim made by Smart EPD, and formerly UL in their prior, expired EPD. Smart EPD LLC certified the results. Anna Lasso participated in creating the UL standard while employed at UL, then founded Smart EPD to certify products under the standard she helped write. Together, these Defendants' certifications enabled a market that has grown to an estimated 1.3 to 1.6 million commercial hand dryers installed across the United States, used approximately 55 billion times annually, and their official stamps of approval developed a fringe industry into a \$1.5B annual US commercial behemoth that would not exist without them.
343. NSF International created NSF P335, titled "Hygienic Commercial Hand Dryers," establishing a 0.1 gram residual moisture threshold. NSF holds current certifications for Dyson products under this standard. Dyson markets itself as "the only hand dryer certified by NSF International Protocol P335." Dyson products achieve zero percent compliance in all independent trials. Excel Dryer has never been NSF certified. Excel's single-outlet design cannot achieve NSF's 0.1 gram threshold in practice.
344. UL Solutions created the Product Category Rules for Hand Dryers in 2016, establishing a 0.25 gram threshold—2.5 times weaker than NSF P335. The committee that wrote it consisted of 10 manufacturer representatives and 2 UL representatives. Excel Dryer held 4 of the 10 manufacturer seats. World Dryer held 3 seats. Hokwang/FASTDRY held 3 seats. William Gagnon, Excel's VP and COO, chaired the committee. His father Denis Gagnon purchased Excel Dryer in 1996,

claiming to have invented the first high speed dryer. No public health officials participated. No consumer representatives participated. No independent researchers participated. UL published this standard and continues to certify hand dryers under it, including Hokwang EPDs valid through April 2027, at claimed drying times of 30-35 seconds.

345. The UL PCR Review Panel included Jon Dettling (Chair) and Jeremy Gregory. Jon Dettling authored the 2009 Quantis LCA commissioned by Excel Dryer. Jeremy Gregory co-authored the 2011 MIT LCA. Both reviewed a PCR that cited their own prior work as authority. They evaluated a standard built on research they themselves had produced.

## M. The Certification Ecosystem

346. The certification system operates as an interconnected network where each entity relies on the entity before it.

347. Table 5: Certification Chain

| Step | Entity         | Action                            | Relies On                             | Independent Verification                        |
|------|----------------|-----------------------------------|---------------------------------------|-------------------------------------------------|
| 1    | Excel Dryer    | Claims 8-second drying time       | Internal assertion                    | None                                            |
| 2    | SGS            | Tests products, certifies results | Manufacturer-provided test parameters | None — tested at 12-15 sec, not 8               |
| 3    | UL Environment | Issues EPD citing SGS data        | SGS test report                       | None — certified 8 sec despite testing at 12-15 |
| 4    | SmartEPD       | Issues EPD citing same SGS data   | 11-year-old SGS report                | None — Anna Lasso verifies herself              |

| Step | Entity                 | Action                        | Relies On                                | Independent Verification                   |
|------|------------------------|-------------------------------|------------------------------------------|--------------------------------------------|
| 5    | TrueNorth Collective   | Conducts LCA                  | “Average test results provided by Excel” | None — manufacturer-supplied data          |
| 6    | LEED / USGBC           | Awards green building credits | EPD certifications                       | None — accepts certified values            |
| 7    | Building Professionals | Input data into energy models | LEED guidance documents                  | None — use published specifications        |
| 8    | Building Owners        | Claim environmental benefits  | LEED certifications                      | None — rely on professional certifications |

348. Foundation: A drying time claim with no supporting test data Result: Every downstream calculation is false
349. SGS independently verified drying performance at 12 and 15 seconds in 2012. No entity in the Excel Dryer portion of this chain independently verified the 8-second claim. Yet every downstream certification, calculation, and credit is based on 8 seconds—a claimed value that appears nowhere in any public test data.
350. Excel’s own LEED v4.1 Credit Contribution document demonstrates this cascade in explicit detail. The document instructs building professionals: “Project teams may input 3.68 Wh per 8 second cycle use... for energy modelling purposes.” It directs them to claim credits based on “Product-Specific Type III Environmental Product Declaration (EPD) certified by UL Environment.” Defendants certify impossible specifications. Excel embeds those specifications in LEED guidance. Building professionals enter false data into certification software. LEED awards credits based on false data. At no point does any party verify that the underlying 8-second claim is true.

## **N. The 2012 SGS Report**

- 351. SGS Performance Test Report No. 2774929EFF-001, dated September 7, 2012, was filed as an exhibit in federal court proceedings. The report is signed by Martin Dodd, Project Engineer, and reviewed by Jody Leber. The client is Excel Dryer, Inc.
- 352. The report tested five hand dryer models. Page 4 of the report states: “Each product was tested in accordance with a revised version of NSF Protocol P335 Hygienic Commercial Hand Dryers currently being developed and reviewed by NSF and its new technical panel for the 5 year protocol update.”
- 353. Page 9 of Annex A states: “For the purposes of NSF Protocol P335, ‘thoroughly dry’ means that less than 0.1 grams of residual moisture per hand for a total of 0.2 grams or less is recovered when a user dries his or her hands on a paper towel after using the hand dryer.” SGS certified results using this methodology. Independent testing documents 2.5 to 3.0 grams—not 0.1 to 0.2 grams. The certified results cannot be independently reproduced.
- 354. This is linguistic sleight of hand. NSF P335 Section 3.4 defines dry hands as “less than 0.1 g residual moisture”—total, not per hand. By redefining the threshold as “0.1 grams per hand for a total of 0.2 grams,” Excel doubled the acceptable moisture while preserving the appearance of the 0.1 gram figure.

## **O. ISO 14025 Independence Violation**

- 355. ISO 14025:2006, Section 8.1.3 requires that EPD verification be performed by an independent verifier “independent of the organization, the EPD, and any parties that have a commercial interest in the product.” Section 8.1.4 specifies that the program operator “shall not act as verifier for EPDs within its own programme.”
- 356. The SmartEPD certificate for XLERATOR Hand Dryer, Certificate No. SmartEPD-2023-002-0006-01, lists Anna Lasso in three capacities on Page 2: as contact for Smart EPD, the EPD Program Operator; as “Independent critical review of the LCA

and data, according to ISO 14044 and ISO 14071”; and as “Independent external verification of EPD, according to ISO 14025.” These three functions are required by ISO 14025 to be performed by independent parties. Anna Lasso performed all three.

357. Smart EPD LLC was incorporated in Virginia in February 2023. Four months later, in June 2023, Smart EPD issued its first major certification: the Excel XLERATOR EPD. Excel was not a new client relationship. Anna Lasso had worked “closely” with William Gagnon for seven years while he chaired the UL PCR committee. The certification was the business plan.
358. The TrueNorth Collective LCA underlying the SmartEPD certificate was also reviewed by Anna Lasso as panel chair. She chaired the LCA review panel, verified the EPD based on that LCA, and operated the program that issued the EPD. Three layers of required independence. One person.

## **P. Excel vs Dyson Litigation**

359. In December 2012, Excel Dryer sued Dyson in the United States District Court for the District of Massachusetts, Case 3:12-cv-30211-MAP, documenting, under oath, previously proprietary or trade secret information displaying an entire trail of conflicting claims about drying time, testing protocols, and science.
360. The litigation produced sworn testimony and documentary evidence of both companies and the certifying agencies arguing about standards and test results that powerfully foreshadow the claims made in this complaint. Each manufacturer publicly accused the other of fraud. Both were right.

### **1. The Core Dispute**

361. Excel sought a preliminary injunction against Dyson’s advertising, which claimed XLERATOR required 20 seconds to dry hands while Airblade required only 12 seconds. Excel’s motion relied on a single SGS test purportedly showing the products’ performance was “comparable” at 12 seconds.

362. Dyson's opposition memorandum exposed Excel's deception.

## **2. The "Revised NSF Protocol P335" Fraud**

363. Excel represented to the court that its SGS testing used "a revised version of NSF Protocol P335 Hygienic Commercial Hand Dryers currently being developed and reviewed by NSF."

364. Dyson's attorneys responded: "The phrase 'revised NSF Protocol P335' unambiguously communicates that at some point, NSF revised its protocol P335 and that Excel's test was based on this revised protocol. That is absolutely untrue."

365. Dyson revealed that Excel had proposed amending NSF P335 to change the dryness threshold from 0.1 grams to 0.2 grams. NSF rejected this proposal. Excel used the rejected standard anyway and represented to the federal court that it was "the revised NSF Protocol P335" without disclosing that NSF had rejected the revision.

## **3. XLERATOR Is Not NSF Certified**

366. Dyson's memorandum stated explicitly: "The Xlerator is not NSF Certified, meaning NSF has not independently verified that it passes NSF P335 and dries hands within 15 seconds."

367. This remains true today. Excel has never achieved NSF P335 certification.

## **4. Dyson's Sworn Counterclaims**

368. On February 22, 2013, Dyson filed its Answer, Statement of Defenses, and Counterclaims. In sworn counterclaims, Dyson alleged: "The claim that the Xlerator dries hands completely in 10-15 seconds is literally false. According to testing performed by Dyson in accordance with NSF P335, the Xlerator takes approximately 20 seconds." Dyson further alleged under oath that "the Airblade achieves hygienic dryness in less than 12 seconds."

369. Both companies' sworn claims are now proven false. 451 residual moisture trials demonstrate that neither product achieves threshold dryness until 70-90 seconds. Dyson was right about Excel. Excel was right about Dyson. Both are responsible for making false claims about themselves.

## **5. The Settlement**

370. The case settled before discovery. Neither company wanted its testing methodology examined under oath. Neither company wanted to explain how products claiming 8-12 second drying times were tested at 12-20 seconds. Neither company wanted to reconcile marketing claims with physical impossibility.
371. The settlement silenced the dispute but preserved the underlying false claims. Both companies continue marketing times neither can achieve.

## **Q. Systemic Consequences and Ongoing Harm**

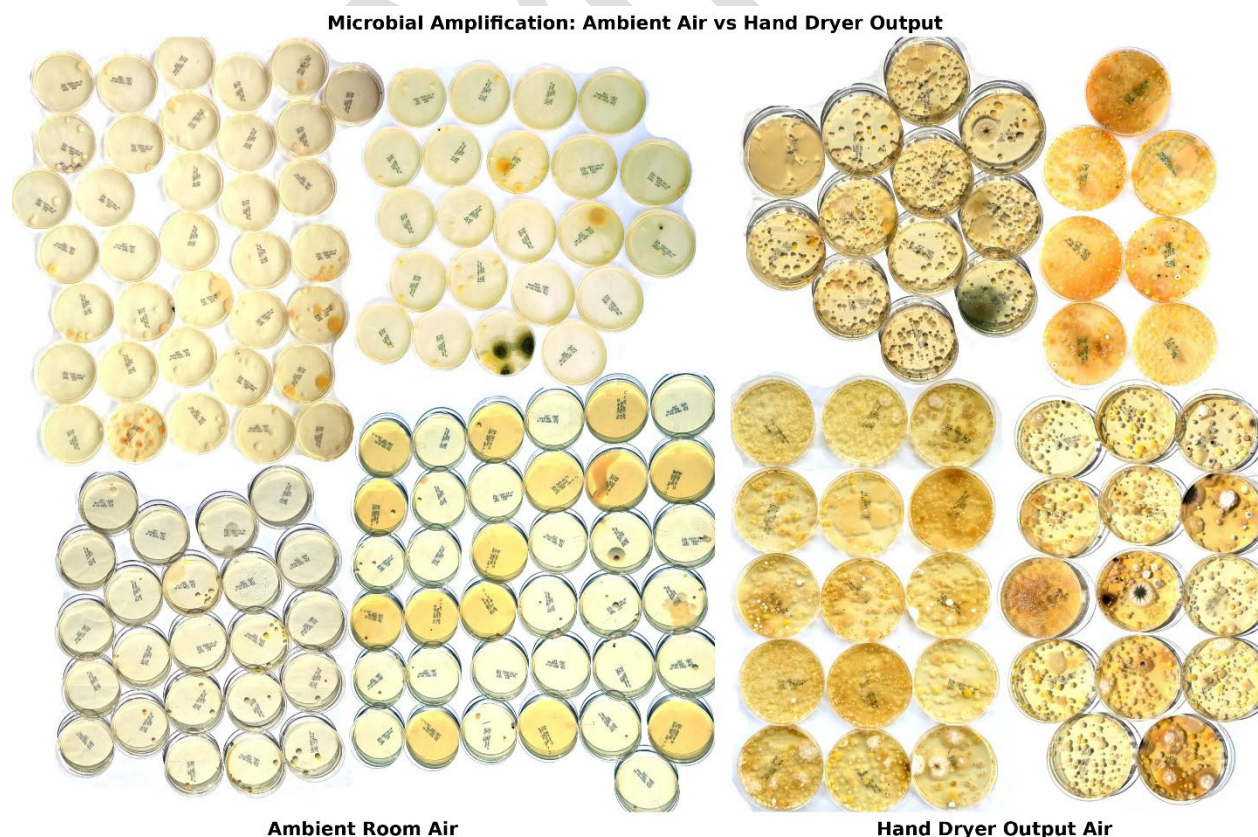
372. The false certifications documented in this Complaint have systemic consequences that extend beyond individual transactions. At any given moment during business hours, approximately 125,000 Americans are simultaneously using certified hand dryers—being exposed to amplified bacterial loads and dispersed contaminated water in products Defendants certified as “hygienic.”
373. The LEED propagation alone affects an estimated 500,000 hand dryers in green-certified buildings. Each dryer using certified but false energy specifications contributes to an estimated 560 GWh of energy consumption missing from building energy accounting. The environmental benefits that justified installation do not exist.
374. The verification burden that Plaintiffs and other institutional purchasers should not have to bear—the cost of independent testing to verify Defendants' certifications—would require approximately \$60,000 and 2.5 years per product line. Defendants'

certifications exist precisely to make such verification unnecessary. When those certifications are false, the entire system fails.

375. The harm continues with every use. The certifications remain active. The products remain installed. The false claims remain on Defendants' websites. The LEED guidance continues to direct building professionals to enter false data. The cascade documented in this Complaint runs continuously, creating new exposures and new injuries every day the certifications remain in effect.

## R. The Hypothetical

376. All aspects of hand dryer performance can be understood by removing the dryer from the room. Does the room improve or degrade? Remove the dryer and the water stays on hands or is absorbed by a towel. The mold doesn't grow. The contamination zone doesn't form. The impossible choices don't exist. The dryer is not incidental to the harm. The dryer is the harm.



## **V. JOINDER OF DEFENDANTS**

377. Joinder is proper under Federal Rule of Civil Procedure 20(a)(2).
378. Same Transaction or Occurrence. All claims arise from an interconnected certification and manufacturing network. NSF created P335. UL created PCR referencing NSF P335. SGS tested to UL PCR. Smart EPD certified using UL PCR methodology. Anna Lasso participated in UL PCR development while at UL and now operates Smart EPD. Dyson and Excel manufactured products bearing these certifications and made representations consistent with them. Each Defendant's conduct is part of the same system.
379. Common Questions. All claims present common questions: whether certified products meet certified specifications; whether manufacturers' representations are true; whether certification creates duties to purchasers; whether certifiers are liable for false certifications.
380. Joint and Several Liability. The harm is non-divisible. Plaintiffs' damages from non-conforming products, property damage, and brand harm cannot be allocated among Defendants who manufactured products, created standards, tested products, and certified compliance. The harm flows from the interconnected system, not from any single participant's isolated conduct.
- 

## **VI. APPLICABLE CASE LAW**

381. *Hempstead v. General Fire Extinguisher Corp.*, 269 F. Supp. 109 (D. Del. 1967). UL was held liable for negligent testing of a fire extinguisher that failed during use. The court established that testing organizations owe duties to foreseeable users who rely on certifications. This case directly supports liability for Defendants who certify products that do not meet certified specifications.

382. *Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680 (1969). The Good Housekeeping Seal created liability for a defective product. An endorsement seal creates a duty to consumers who rely on it. The NSF P335 mark and UL mark are precisely such endorsement seals.
383. *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270 (Pa. 2005). Pennsylvania adopted Restatement § 552 for information suppliers. Parties who supply false information for the guidance of others are liable to those who justifiably rely on that information. Certification is precisely such information supply.
384. *Toman v. Underwriters Laboratories, Inc.*, No. 81-0098-G (D. Mass. 1982). Federal preemption based on NRTL status does not shield UL from state law claims. This case forecloses any argument that UL's federal recognition immunizes it from liability for negligent standard creation.
385. *Alflex Corp. v. Underwriters Laboratories, Inc.*, 914 F.2d 175 (9th Cir. 1990). Distinguished: In *Alflex*, UL had limited electrical testing duties and did not undertake broader product safety certification. Here, UL voluntarily created hygiene-relevant standards by publishing a PCR that expressly references NSF P335 and its hygiene requirements.
386. *Warren Tech., Inc. v. UL LLC*, No. 20-CV-856 (W.D.N.Y. 2022). Distinguished: In *Warren Tech.*, no breach was shown. Here, 2,770% breach across 451 trials with zero percent compliance is documented. The breach is proven, massive, and systematic.
387. *Gregg v. Ameriprise Financial, Inc.*, 245 A.3d 637 (Pa. 2021). The Pennsylvania Supreme Court confirmed that UTPCPL creates strict liability. No proof of intent is required. Deceptive conduct is actionable regardless of mental state. The Texas DTPA operates similarly.
-

## **VII. CAUSES OF ACTION**

### **COUNT I: NEGLIGENCE**

388. (Against Defendant Manufacturers Dyson and Excel)
389. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
390. Defendants owed Plaintiffs a duty of reasonable care in the design, manufacture, testing, marketing, and sale of their hand dryer products. This duty included the obligation to ensure that product specifications and marketing claims were accurate, to conduct adequate testing under intended use conditions, and to refrain from making representations that could not be substantiated.
391. Defendants breached this duty by making performance representations that were physically impossible to achieve, by failing to conduct adequate testing in functioning restroom environments, by marketing products as hygienic when they systematically amplify contamination, by claiming drying times that cannot occur under any operating conditions, and by making environmental claims predicated on false operational assumptions.
392. Defendants' breach of duty was the direct and proximate cause of Plaintiffs' damages, including the cost of non-conforming products, property damage to walls, floors, and fixtures from water dispersal and mold, increased operating costs, and remediation expenses.
393. As a direct and proximate result of Defendants' negligence, Plaintiffs have suffered damages in an amount to be determined at trial.

### **COUNT II: PRODUCTS LIABILITY — DESIGN DEFECT**

394. (Against Defendant Manufacturers Dyson and Excel)

395. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
396. Defendants designed, manufactured, and sold hand dryer products that were defective and unreasonably dangerous when they left Defendants' control. The defect is the design itself, not a manufacturing flaw. The products are designed to remove water from hands by high-velocity air dispersal—a mechanism that physically cannot achieve the claimed dryness threshold in the claimed time and that necessarily disperses water (and the microbial content of that water) throughout the restroom environment.
397. Under the risk-utility test, the design is defective because the risks of the design outweigh its benefits. The risks include: amplified microbial exposure to users, contaminated water dispersal throughout restroom environments, mold colonization of building surfaces, and failure to achieve the hygiene outcomes represented to purchasers.
398. Under the consumer expectations test, the design is defective because the products fail to perform as safely as an ordinary consumer would expect when used in an intended and reasonably foreseeable manner.
399. A reasonable alternative design exists and was economically and technologically feasible at the time of manufacture: white paper towels.
400. As a direct and proximate result of Defendants' defective product design, Plaintiffs have suffered damages in an amount to be determined at trial.

### **COUNT III: PRODUCTS LIABILITY — FAILURE TO WARN**

401. (Against Defendant Manufacturers Dyson and Excel)
402. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

403. Defendants knew or should have known that their products amplify microbial contamination, fail to achieve claimed drying times, disperse water throughout restroom environments, and cause mold colonization on surrounding surfaces.
404. Defendants had a duty to warn purchasers and users of these risks. Defendants failed to provide any warning. Instead, Defendants made affirmative representations of hygiene and performance that concealed and contradicted the actual risks.
405. Defendants' failure to warn was the direct and proximate cause of Plaintiffs' damages.
406. As a direct and proximate result of Defendants' failure to warn, Plaintiffs have suffered damages in an amount to be determined at trial.

#### **COUNT IV: BREACH OF EXPRESS WARRANTY**

407. (Against Defendant Manufacturers Dyson and Excel)
408. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
409. Defendants made express warranties regarding their products through product specifications, marketing materials, technical data sheets, environmental declarations, and certification claims. These warranties included representations that the products are "hygienic," that they dry hands in 8-14 seconds, that they provide specified environmental benefits, and that they are certified to meet industry standards.
410. These express warranties became part of the basis of the bargain between the parties. Plaintiffs relied on these warranties when making purchasing decisions.

411. Defendants' products do not conform to these express warranties. The products amplify rather than reduce contamination, fail to dry hands at claimed times, and do not provide the stated environmental benefits.

412. As a direct and proximate result of Defendants' breach of express warranty, Plaintiffs have suffered damages in an amount to be determined at trial.

#### **COUNT V: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

413. (Against Defendant Manufacturers Dyson and Excel)

414. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

415. Defendants are merchants with respect to hand dryers within the meaning of Texas Business and Commerce Code § 2.314 and analogous provisions of the Uniform Commercial Code.

416. By selling their products, Defendants impliedly warranted that the products were merchantable—that they would pass without objection in the trade, be of fair average quality, be fit for the ordinary purposes for which such goods are used, and conform to any promises or affirmations of fact made on the container or label.

417. Defendants' products are not merchantable. Hand dryers that amplify contamination rather than provide hygiene, that fail to dry hands in any timeframe approaching specifications, and that damage surrounding building surfaces are not fit for the ordinary purpose of hygienic hand drying in commercial restrooms.

418. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs have suffered damages in an amount to be determined at trial.

## **COUNT VI: BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE**

419. (Against Defendant Manufacturers Dyson and Excel)
420. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
421. Defendants knew or had reason to know that Plaintiffs required hand dryers suitable for use in food service environments where employees prepare food and customers access self-service food stations.
422. Defendants knew or had reason to know that Plaintiffs were relying on Defendants' skill and judgment to furnish suitable products.
423. Defendants' products are not fit for the particular purpose of hygienic hand drying in food service environments. Products that leave hands wet and amplify bacterial contamination are unsuitable for use immediately before food handling.
424. As a direct and proximate result of Defendants' breach of the implied warranty of fitness for particular purpose, Plaintiffs have suffered damages in an amount to be determined at trial.

## **COUNT VII: NEGLIGENT MISREPRESENTATION**

425. (Against All Defendants)
426. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
427. Under Restatement (Second) of Torts § 552, one who supplies false information for the guidance of others in their business transactions is liable for pecuniary loss caused to them by their justifiable reliance upon the information.

428. Defendants supplied false information regarding hand dryer performance for the guidance of facility operators and purchasers. This information included: certification that products achieve 0.1 grams or 0.25 grams residual moisture when products actually achieve 2.5 to 3.0 grams; certification that products are “hygienic” when products amplify bacterial contamination by 50 to 110 times; certification that products meet drying performance standards when zero percent of 451 trials achieved compliance; and marketing claims of 8-14 second drying when actual drying requires 70-90 seconds.
429. Defendants failed to exercise reasonable care in obtaining and communicating this information.
430. Plaintiffs justifiably relied on Defendants’ representations and certifications in making purchasing decisions.
431. As a direct and proximate result of Defendants’ negligent misrepresentation, Plaintiffs have suffered damages in an amount to be determined at trial.

**COUNT VIII: VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES—  
CONSUMER PROTECTION ACT**

432. (Against All Defendants)
433. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
434. The Texas Deceptive Trade Practices—Consumer Protection Act, Tex. Bus. & Com. Code § 17.41 et seq. (“DTPA”), prohibits false, misleading, or deceptive acts or practices in the conduct of trade or commerce.
435. Plaintiffs are “consumers” within the meaning of the DTPA because they sought and acquired Defendants’ products by purchase for commercial purposes.

436. Defendants violated the DTPA by: (a) representing that their products have characteristics, uses, and benefits which they do not have, in violation of Tex. Bus. & Com. Code § 17.46(b)(5); (b) representing that their products are of a particular standard, quality, or grade when they are of another, in violation of Tex. Bus. & Com. Code § 17.46(b)(7); (c) advertising their products with intent not to sell them as advertised, in violation of Tex. Bus. & Com. Code § 17.46(b)(9); and (d) engaging in unconscionable actions or courses of action that took advantage of consumers' lack of knowledge regarding the physical impossibility of Defendants' claims.
437. Defendants' violations of the DTPA were a producing cause of Plaintiffs' damages.
438. Plaintiffs seek actual damages, statutory damages, court costs, and reasonable attorneys' fees as provided by the DTPA.

#### **COUNT IX: UNJUST ENRICHMENT**

439. (Against All Defendants)
440. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
441. Plaintiffs conferred a benefit on Defendants by purchasing Defendants' hand dryer products at prices reflecting the represented performance characteristics and by relying on certifications for which certification fees were embedded in product pricing.
442. Defendants appreciated and accepted this benefit.
443. Defendants' retention of this benefit under circumstances where the products do not provide the represented performance would be unjust and inequitable.
444. Plaintiffs are entitled to restitution of the amounts paid to Defendants in excess of the actual value of the products and certifications received.

## **COUNT X: NEGLIGENT UNDERTAKING (RESTATEMENT § 324A)**

445. (Against Defendant Certifiers NSF, SGS, UL, SmartEPD, and Anna Lasso)
446. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
447. Under Restatement (Second) of Torts § 324A, one who undertakes to render services to another which he should recognize as necessary for the protection of third persons is subject to liability to the third persons for physical harm resulting from his failure to exercise reasonable care, if his failure to exercise such care increases the risk of harm, or the harm is suffered because of the other's reliance upon the undertaking.
448. Defendants undertook to certify hand dryer products for protection of third persons—users and purchasers relying on certifications for safety and performance assurance.
449. Defendants failed to exercise reasonable care. NSF certified “hygienic” products without testing hygiene. UL permitted manufacturer capture of its standards committee. SGS tested at times different from marketing claims. Smart EPD issued certifications with one person in three required-independent roles. Anna Lasso verified her own certifications.
450. Defendants’ failures increased the risk of harm to Plaintiffs and the public by enabling false claims to carry official certification marks.
451. Plaintiffs suffered harm because of reliance on Defendants’ certifications.
452. As a direct and proximate result of Defendants’ negligent undertaking, Plaintiffs have suffered damages in an amount to be determined at trial.

## **COUNT XI: BREACH OF CERTIFICATION CONTRACT**

453. (Against Defendant NSF International)

454. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
455. NSF International markets itself as “protecting public health” and promises “assurance that the product has been rigorously tested.” NSF’s certification marks are designed for consumer visibility and reliance.
456. These representations constitute an offer to consumers and purchasers. Plaintiffs’ purchase of products bearing NSF certification constitutes acceptance. Certification fees embedded in product pricing constitute consideration flowing from Plaintiffs to NSF through manufacturers as conduit.
457. NSF breached this contract by certifying products under NSF P335 that achieve zero percent compliance with certified specifications. NSF certified products as “Hygienic Commercial Hand Dryers” that amplify bacterial contamination by 50-110 times.
458. As a direct and proximate result of NSF’s breach of certification contract, Plaintiffs have suffered damages in an amount to be determined at trial.

## **COUNT XII: FALSE CERTIFICATION**

459. (Against Defendant NSF International)
460. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
461. NSF issued certifications under NSF P335 representing that certified products achieve 0.1 grams residual moisture within specified drying times with 95% compliance.
462. This certification is false. Empirical testing demonstrates zero percent compliance at certified times with average residual moisture of 2.77 grams—2,770% above the certified threshold.

463. NSF knew or should have known the certification was false. NSF created the standard. NSF controlled the testing methodology. NSF issued the certification.
464. As a direct and proximate result of NSF's false certification, Plaintiffs have suffered damages in an amount to be determined at trial.

### **COUNT XIII: NEGLIGENT TESTING**

465. (Against Defendant SGS North America)
466. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
467. SGS conducted testing of hand dryer products and issued reports certifying drying performance. SGS test reports were relied upon by manufacturers to substantiate performance claims and by subsequent certifiers to issue EPDs.
468. SGS failed to exercise reasonable care in conducting its testing. SGS tested at 12-15 seconds while manufacturers claimed 8 seconds. SGS used a "revised" NSF protocol that NSF had rejected. SGS certified results that could not be independently replicated.
469. SGS's negligent testing enabled false claims to cascade through the certification chain, affecting every downstream certification, calculation, and credit.
470. As a direct and proximate result of SGS's negligent testing, Plaintiffs have suffered damages in an amount to be determined at trial.

### **COUNT XIV: NEGLIGENT STANDARD CREATION**

471. (Against Defendant UL Solutions)
472. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

473. UL created the Product Category Rules for Hand Dryers, establishing methodology for environmental certification of hand dryer products.
474. UL failed to exercise reasonable care in creating this standard. UL permitted a committee composed 80% of manufacturer representatives with zero public health officials. UL established a 0.25 gram threshold with no scientific justification. UL failed to address water dispersal, output air contamination, or mold colonization. UL's own PCR Figure 2 data showed 8-second drying was impossible, yet UL published a standard enabling 8-second claims.
475. UL's negligent standard creation enabled false certifications that harmed Plaintiffs.
476. As a direct and proximate result of UL's negligent standard creation, Plaintiffs have suffered damages in an amount to be determined at trial.

#### **COUNT XV: NEGLIGENT CERTIFICATION**

477. (Against Defendants SmartEPD and Anna Lasso)
478. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.
479. SmartEPD issued Environmental Product Declaration No. SmartEPD-2023-002-0006-01 certifying the XLERATOR Hand Dryer at 8-second drying time.
480. SmartEPD and Anna Lasso failed to exercise reasonable care in issuing this certification. Anna Lasso occupied three roles that ISO 14025 requires to be independent: Program Operator, Independent Critical Reviewer, and Independent External Verifier. SmartEPD certified 8-second drying based on 11-year-old SGS testing that was conducted at 12-15 seconds. SmartEPD certified physically impossible specifications.
481. SmartEPD and Anna Lasso's negligent certification enabled false claims that harmed Plaintiffs.

482. As a direct and proximate result of SmartEPD and Anna Lasso's negligent certification, Plaintiffs have suffered damages in an amount to be determined at trial.

## **COUNT XVI: DECLARATORY JUDGMENT**

483. (Against All Defendants)

484. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

485. An actual controversy exists between Plaintiffs and Defendants concerning the accuracy of Defendants' certifications, the compliance of certified products with certified specifications, and the duties owed by certifiers to purchasers and users.

486. Plaintiffs seek a declaratory judgment that:

487. Defendants' certifications of 8-14 second drying times achieving 0.1 to 0.25 grams residual moisture are false;

488. Defendants' certifications of products as "hygienic" when products amplify bacterial contamination by 50-110 times are false;

489. Defendants' environmental certifications based on 8-second drying times are mathematically invalid;

490. Certifiers owe duties to purchasers and users who rely on certification marks;

491. The ISO 14025 independence violations in SmartEPD certifications render those certifications void;

492. Products that disperse contaminated water throughout restroom environments and cause mold colonization in 100% of installations do not meet any reasonable definition of "hygienic."

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## **VIII. DAMAGES**

493. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered and continue to suffer damages including but not limited to:
  494. The purchase price of hand dryers that do not perform as represented;
  495. The cost of repairing or replacing walls, floors, and fixtures damaged by water dispersal and mold colonization—property distinct from the hand dryers themselves—including drywall replacement, repainting, tile repair, and fixture replacement in restrooms where mold growth has compromised building materials;
  496. Increased energy costs resulting from actual operating times 7× to 10× longer than represented;
  497. The cost of equipment remediation and replacement;
  498. Diminution in brand value arising from association with products that degrade rather than enhance food service environments;
  499. Statutory damages as provided by the Texas DTPA;
  500. Attorneys' fees and costs of suit.
  501. The full extent of Plaintiffs' damages will be established at trial.
- 

## **IX. JURY DEMAND**

502. Plaintiffs demand a trial by jury on all issues so triable.
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## **X. PRAYER FOR RELIEF**

503. WHEREFORE, Plaintiffs Whole Foods Market, Inc. and Amazon.com, Inc. respectfully request that this Court enter judgment in their favor and against all Defendants, and award the following relief:

### **A. Injunctive Relief**

- 504. Injunctive relief requiring Defendant Manufacturers to cease making false and misleading representations regarding the hygiene, drying time, and environmental performance of their products;
- 505. Injunctive relief requiring Defendant Manufacturers to issue corrective disclosures to prior purchasers;
- 506. Injunctive relief requiring Defendant Manufacturers to remove false claims from all marketing materials, websites, product documentation, and certification submissions;
- 507. Injunctive relief requiring Defendant Certifiers to withdraw or correct certifications that do not reflect actual product performance;
- 508. Injunctive relief requiring NSF International to withdraw or correct NSF P335 certifications for products that achieve zero percent compliance with certified specifications;
- 509. Injunctive relief requiring SmartEPD to withdraw certifications issued in violation of ISO 14025 independence requirements;

### **B. In-Court Demonstration**

- 510. If Defendants contest the accuracy of empirical testing, Plaintiffs request the opportunity to demonstrate hand dryer performance in court. A production hand dryer, properly installed, can be tested in minutes using only a stopwatch and paper towels. If Defendants' certified specifications are accurate, Defendants should

welcome this demonstration. If Defendants cannot replicate their own certified specifications in court, that failure will establish the falsity of the certifications;

**C. Declaratory Relief**

- 511. Declaratory judgment that Defendants' certifications are false as documented in this Complaint;
- 512. Declaratory judgment that certifiers owe duties to purchasers and users who rely on certification marks;
- 513. Declaratory judgment that the ISO 14025 independence violations in SmartEPD certifications render those certifications void;

**D. Damages**

- 514. Compensatory damages in an amount to be determined at trial;
- 515. Statutory damages as provided by the Texas DTPA;
- 516. Restitution and disgorgement of profits obtained through Defendants' wrongful conduct;
- 517. Pre-judgment and post-judgment interest at the maximum rate permitted by law;
- 518. Reasonable attorneys' fees and costs of suit; and
- 519. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

---

[Attorney Name]

[State Bar No.]

[Firm Name]

[Address]

[City, State ZIP]

[Telephone]

[Email]

Counsel for Plaintiffs Whole Foods Market, Inc. and Amazon.com, Inc.

Dated: \_\_\_\_\_

## EXHIBITS

### Journal Preprints

**[EXHIBIT-A]** Transmission of Bacteria and Fungus via Dyson and Xlerator Hand Dryers, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.15504115; Journal Preprint 1 of 11

**[EXHIBIT-B]** Testing the Validity of Hand Dryer Drying Time Specifications, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.15503698; Journal Preprint 2 of 11

**[EXHIBIT-C]** Visual Analysis of Water Dispersion Patterns, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.15503304; Journal Preprint 3 of 11

**[EXHIBIT-D]** Bacterial and Fungal Contamination Assessment of Paper Towel Types, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.15504144; Journal Preprint 4 of 11

**[EXHIBIT-E]** Systematic Performance Failure in Commercial Hand Dryers, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17858443; Journal Preprint 5 of 11

**[EXHIBIT-F]** Baseline Water Mass on Freshly Washed Hands, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17858834; Journal Preprint 6 of 11

**[EXHIBIT-G]** An Empirical Refutation of Green Energy Claims, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17859198; Journal Preprint 7 of 11

**[EXHIBIT-H]** Catastrophic Time-To-Dry Failures via Bi-Modal Mechanism, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17869567; Journal Preprint 8 of 11

**[EXHIBIT-I]** Validation of Hand Dryer Microbial Amplification, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17859894; Journal Preprint 9 of 11

**[EXHIBIT-J]** The Wandering Plume of Filth, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17860971; Journal Preprint 10 of 11

### **Complete List of Testing Data Files**

**[EXHIBIT-K]** Complete Data File Index, Blouch 2025

### **Dryer Time Test Results Graphs**

**[EXHIBIT L]** Comprehensive All-Trials Time-To-Dry Hand Dryer Data Graph

### **Petri Dish Images**

**[EXHIBIT-M]** 136 Ambient Room Air Petri Dish Images Sampled In Front of Machines, Blouch, R. A. Jr. (2025)

**[EXHIBIT-N]** 60 Hand Dryer Output Air Jet Petri Dish Sample Images, Blouch, R. A. Jr. (2025)

**[EXHIBIT-O]** 28 Brown Paper Towel Petri Dish Sample Images, Blouch, R. A. Jr. (2025)

**[EXHIBIT-P]** 47 White Paper Towel Petri Dish Sample Images, Blouch, R. A. Jr. (2025)

### **Plume of Filth Images**

**[EXHIBIT-Q]** Hand Dryer Plume of Filth Images

**[EXHIBIT-R]** Hand Dryer Mold Images with Corroborating Petri Dish Test Images

### **Comprehensive summary articles**

**[EXHIBIT-S]** Comprehensive Hand Washing and Hand Drying Efficacy Studies, 59, AI, (December 2025)

**[EXHIBIT-T]** Comprehensive Functioning Hand Dryer Output Air Studies, 18, AI, (December 2025)

### **Lab Testing**

**[EXHIBIT-U]** Hayes Microbial Consulting Report (EPA Laboratory ID: VA01419)

### **Evidence of Plaintiff Exposure**

**[EXHIBIT-V]** Evidence of Plaintiff Exposure — Starbucks Rewards History + M&T Bank Statements

### **Standards documents**

**[EXHIBIT-W]** UL PCR for Hand Dryers (July 13, 2016)

**[EXHIBIT-X]** NSF Protocol P335: Hygienic Commercial Hand Dryers (April 2007)

**[EXHIBIT-Y]** ISO 14025 Environmental Standards Principles and Procedures

**[EXHIBIT-Z]** ISO 14044 Life Cycle Assessment Requirements and Guidelines

### **Certifications**

**[EXHIBIT-AA]** Smart EPD Certificate SmartEPD-2023-002-0006-01 (XLERATOR)

**[EXHIBIT-BB]** SGS Performance Test Report No. 2774929EFF-001 (Sept. 7, 2012)

**[EXHIBIT-CC]** UL Environment EPD No. 4787137936.102.1 — XLERATOR Hand Dryer certification; July 25, 2017

**[EXHIBIT-DD]** UL Environment EPD No. 4787616201.106.1 — Hokwang 2200 Hand Dryer certification; April 1 2022

**[EXHIBIT-EE]** TrueNorth Collective LCA (May 2023): Comparative Life Cycle Assessment of Hand Drying Systems: Excel Hand Dryers and Paper Towel Systems

**[EXHIBIT-FF]** MIT Materials Systems Laboratory Lifecycle Assessment — Document 6-1, September 2011.

**[EXHIBIT-GG]** NSF P335 Dyson Certified Live Listing 251231

**[EXHIBIT-HH]** XLERATOR LEED v4.1 Document

**[EXHIBIT-II]** DYSON LEED May 2014 Document

### **Collusion Network Structures**

**[EXHIBIT-JJ]** Personnel and Committee Connections Master Reference Document

**[EXHIBIT-KK]** Standards and Certification Chronology UL to Smart EPD, Lasso, Blouch 2025

### **Defendant Source Documents**

**[EXHIBIT-LL]** Anna Lasso, The First Sustainable Hand Dryer, Excel UK Website December 2025

### **Journalistic Industry Analysis and History**

**[EXHIBIT-MM]** Hand dryers v paper towels, The Guardian\_files, The Guardian, 25 April, 2019

### **Excel V Dyson Court Documents — Case\_3:12-cv-30211-MAP\_(D.\_Mass.)**

**[EXHIBIT-NN]** Excel V Dyson Original Complaint, PACER

**[EXHIBIT-OO]** Denis Gagnon Affidavit Excel V Dyson, PACER

**[EXHIBIT-PP]** Toby Saville Affidavit Excel V Dyson, PACER

**[EXHIBIT-PP-A]** Toby Saville Claimed Dry Times Versus Ron Blouch Data, a Detailed Comparison

**[EXHIBIT-QQ]** Dyson's Answer, Statement of Defenses, and Counterclaims — Document filed February 22, 2013.

**[EXHIBIT-RR]** Defendant Dyson, Inc.'s Memorandum of Law in Opposition to Plaintiff Excel Dryer, Inc.'s Motion for Preliminary Injunction

**[EXHIBIT-SS]** Excel Reply to Dyson Opposition — Document 32, Filed February 4, 2013; includes Second Declaration of Denis Gagnon (Document 32-1)

**[EXHIBIT-TT]** MIT-QUANTIS Letter in response to dry time testing conflicts, 17 October 2012

**[EXHIBIT-UU]** Excel White Paper: "An Ultrafast, Comfortable Hand Dryer"

#### **ITC Complaint**

**[EXHIBIT-VV]** ITC COMPLAINT; Excel Dryer V Multiple Respondents, China; DN 3159; June 24, 2016

#### **False Claims Summary Documents**

**[EXHIBIT-WW]** False Advertising Claims Analysis Dyson

**[EXHIBIT-XX]** False Advertising Claims Analysis Excel

**[EXHIBIT-YY]** False Claims Analysis NSF with UL Supplemental Analysis

**[EXHIBIT-ZZ]** False Claims Supporting Screenshots and Document Images

#### **Global Dryer Statistical Estimates**

**[EXHIBIT-AAA]** US Dryer Use Estimates Annual and Per Use with microbe estimates, Blouch 2025

**[EXHIBIT-BBB]** US Dryer Use Estimates Annual and Per Use with energy estimates, Blouch 2025

**[EXHIBIT-CCC]** US Dryer Use Estimates Annual and Per Use with LEED estimates, Blouch 2025

#### **Hokwang Dryer Product Sheets, UL**

**[EXHIBIT-DDD]** Hokwang 2200W product sheet with UL certification, December 2025

**[EXHIBIT-EEE]** Hokwang high speed EcoHygiene product sheet without UL certification, December 2025

## **Journal Preprint**

**[EXHIBIT-FFF]** Performance Failures in Commercial Hand Dryers: An Historical Synthesis and Sequential Summary Review of an Eleven-Study Research Program, Blouch, R. A. Jr. (2026); DOI: 10.5281/zenodo.18322481; Journal Preprint 11 of 11

**[EXHIBIT-GGG]** Dyson False Advertising Claims, Blouch 2025

**[EXHIBIT-HHH]** Excel False Advertising Claims, Blouch 2025

**[EXHIBIT-III]** NSF False advertising Claims, Blouch 2025

**[EXHIBIT-JJJ]** Screenshot False Advertising Claims Supporting Material

**[EXHIBIT-KKK]** Grand Central Terminal Excel Case Study

**[EXHIBIT-LLL]** US Green Building Council Excel Case Study

**[EXHIBIT-MMM]** Northwestern University Hospitals Excel Case Study

**[EXHIBIT-NNN]** Seabury Excel Case Study

**[EXHIBIT-OOO]** USDA Excel Case Study

**[EXHIBIT-PPP]** Dyson Energy Saving Signs

**[EXHIBIT-QQQ]** Excel Energy Savings Signs

**[EXHIBIT-RRR]** Gia AIRMID study

**[EXHIBIT-SSS]** Xlerator Hygiene Technical Data Sheet

**[EXHIBIT-TTT]** Unified Certifiers Civil Complaint, Blouch 2026